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CIS

FINAL REPORT OF THE SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY

JOINT HEARINGS

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY

OF THE

SENATE COMMITTEE ON THE JUDICIARY

AND

SUBCOMMITTEE ON IMMIGRATION, REFUGEES AND INTERNATIONAL LAW

OF THE

HOUSE COMMITTEE ON THE JUDICIARY

NINETY-SEVENTH CONGRESS

FIRST SESSION

ON THE

FINAL REPORT OF THE SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY

MAY 5, 6, AND 7, 1981

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[1] This report may be found in the files of the Senate Subcommittee on Immigration and Refugee Policy.

[2] This report may be found in the files of the Senate Subcommittee on Immigration and Refugee Policy. Copies may be purchased from the Center for Labor & Migration Studies, New TransCentury Foundation, 1789 Columbia Road NW., Washington, D.C. 20009.

FINAL REPORT OF THE SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY

TUESDAY, MAY 5, 1981

U.S. CONGRESS, SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY OF THE SENATE COMMITTEE ON THE JUDICIARY AND SUBCOMMITTEE ON IMMIGRATION, REFUGEES, AND INTERNATIONAL LAW OF THE HOUSE COMMITTEE ON THE JUDICIARY,

Washington, D.C.

The subcommittees met at 2 p.m. in room 2228, Dirksen Senate Office Building, Hon. Alan K. Simpson (chairman of the Senate subcommittee) presiding.

Present: Senators Simpson, Thurmond, Grassley, and Kennedy; and Representatives Mazzoli (chairman of the House subcommittee), Hall, Schroeder, Frank, Fish, Lungren, and McCollum.

Senator SIMPSON. We call the hearing to order, and at this time I recognize Chairman Ron Mazzoli of the House Subcommittee on Immigration, Refugees, and International Law.

Representative MAZZOLI. Thank you, Mr. Chairman. I ask unanimous consent that the subcommittees permit coverage of this hearing by television broadcast, radio broadcast or still photography.

Senator SIMPSON. Without objection, it is so ordered.

Representative MAZZOLI. Thank you, Mr. Chairman.

Senator SIMPSON. That's an interesting part of House procedure there, isn't it? We don't do that over here. We just let her rip.

Representative MAZZOLI. I think I like the let her rip system much better, really.

Senator SIMPSON. Well, it is a privilege to participate in these proceedings. I have a longer and more complete statement and will request that that be entered into the record.

[The statements of Senators Simpson and Thurmond follow:]

OPENING STATEMENT OF
HONORABLE ALAN K. SIMPSON
CHAIRMAN
SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY
JOINT HEARINGS
MAY 5, 1981

CHAIRMAN MAZZOLI, COLLEAGUES FROM THE SENATE SUBCOMMITTEE, AND COLLEAGUES FROM THE HOUSE SUBCOMMITTEE:

THE FIRST JOINT HEARING OF THE SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY OF THE U.S. SENATE COMMITTEE ON THE JUDICIARY AND THE SUBCOMMITTEE ON IMMIGRATION, REFUGEES AND INTERNATIONAL LAW OF THE U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON THE JUDICIARY, ON THE SUBJECT OF THE FINAL REPORT OF THE SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY, WILL COME TO ORDER.

JOINT CONGRESSIONAL HEARINGS ARE NEARLY UNPRECEDENTED. I UNDERSTAND THAT THE LAST TIME IT OCCURRED WAS THIRTY YEARS AGO AND THEN BOTH HOUSES OF CONGRESS WERE CONTROLLED BY MY GOOD COLLEAGUES ON THE OTHER SIDE OF THE AISLE! CHAIRMAN MAZZOLI AND I TRUST THAT THE FACT THAT WE ARE ABLE TO WORK TOGETHER ON THIS ISSUE TO THIS DEGREE--DESPITE OUR DIFFERING PARTY AFFILIATIONS--WILL INDEED INDICATE THE NECESSITY FOR A BIPARTISAN REVISION OF OUR NATION'S IMMIGRATION AND REFUGEE POLICY. WE ALSO TRUST THAT THE JOINT HEARING PROCESS AND CLOSE CONSULTATIONS WITH EACH BODY WILL FACILITATE THE DEVELOPMENT AND ENACTMENT OF THE LEGISLATIVE REFORMS WHICH ARE SO VITALLY NEEDED IN THIS AREA.

THESE INITIAL HEARINGS ARE INTENDED TO OBTAIN PUBLIC REACTION TO THE FINAL REPORT OF THE SELECT COMMISSION. WE HOPE BY THIS, NOT ONLY TO LEARN MORE ABOUT THE STATUS OF OUR IMMIGRATION AND REFUGEE POLICIES, BUT ALSO TO ASSESS THE POLITICAL ENVIRONMENT IN WHICH THE UPCOMING DEBATE WILL BE CONDUCTED. OUR GOAL IS TO DEVELOP POLICIES AND SPECIFIC LEGISLATIVE PROPOSALS WHICH WILL BOTH SATISFY THE NEEDS OF THE AMERICAN PEOPLE AND BE POLITICALLY REALISTIC TO THE DEGREE THAT THEY CAN BE SUCCESSFULLY ENACTED INTO LAW. ONCE THESE INITIAL

GENERAL HEARINGS ARE COMPLETE, WE SHOULD BE IN A BETTER POSITION TO DETERMINE WHAT HEARINGS WILL BE CONDUCTED ON PARTICULAR ISSUES AND WHAT LEGISLATIVE STRATEGIES OFFER THE MOST PROMISE OF MEETING OUR GOALS OF SUBSTANTIVE REFORM AND POLITICAL FEASIBILITY. IN THE NEXT TWO YEARS, THE YEARS OF THE 97TH CONGRESS, THE UNITED STATES WILL HAVE AN EXTRAORDINARY OPPORTUNITY TO REFORM ITS IMMIGRATION AND REFUGEE POLICY. PUBLIC AWARENESS, SENSITIVITY AND INTEREST ARE NOW UNUSUALLY HIGH. FURTHERMORE, THE TWO YEAR EFFORT OF THE SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY HAS JUST CONCLUDED WITH THE MARCH 1ST FILING OF ITS FINAL REPORT, WHICH WILL BE THE SUBJECT OF THESE HEARINGS.

I HAVE HAD THE HONOR OF BEING ONE OF THE SIXTEEN COMMISSIONERS WHO WERE A PART OF THAT EFFORT, WHICH WAS THE MOST AMBITIOUS SUCH PROJECT IN OVER 50 YEARS. THE REV. THEODORE M. HESBURGH WHO WILL BE THE FIRST WITNESS AT THESE JOINT HEARINGS WAS THE CHAIRMAN OF THE SELECT COMMISSION. FATHER TED DID A MOST REMARKABLE JOB IN THAT CAPACITY. HE IS A TRUE HUMANITARIAN AND A MAN WHO GIVES MUCH OF HIMSELF TO ANY ISSUE IN WHICH HE IS INVOLVED. WITHOUT HIS INNATE SKILLS OF RECONCILIATION AND DIRECTION THE TASK WOULD HAVE BEEN A LONG AND LABORED ONE.

AT PRESENT AN INTER-AGENCY TASK FORCE WITHIN THE EXECUTIVE BRANCH IS IN THE PROCESS OF FORMULATING CONCRETE POLICY RECOMMENDATIONS TO THE PRESIDENT. WE AWAIT WITH CONSIDERABLE INTEREST RECEIPT OF THE PRESIDENT'S VIEWS.

THE CURRENT FLOW OF IMMIGRANTS AND REFUGEES TO THE UNITED STATES IS OUT OF CONTROL. EXISTING LAW ALLOWS TOTAL LEGAL ADMISSIONS TO GROW CONTINUOUSLY, LARGELY WITHOUT REGARD TO THE NEEDS OF THIS COUNTRY. REFUGEES ARE BEING ADMITTED IN NUMBERS FOUR TIMES THE 50,000 LEVEL SPECIFIED AS THE "NORMAL" FLOW IN THE REFUGEE ACT OF 1980. INDEED, THE U.S. TODAY IS TAKING IN MORE LEGAL IMMIGRANTS AND REFUGEES FOR PERMANENT RESETTLEMENT THAN THE REST OF THE WORLD COMBINED. IN ADDITION, HUNDREDS OF THOUSANDS OF ILLEGAL IMMIGRANTS CROSS OUR BORDERS EVERY YEAR. MANY STAY, CREATING A FUGITIVE AND EXPLOITED SUBSOCIETY IN OUR COUNTRY WHICH IS ESTIMATED TO COMPRISE between 3 and 8 million people. They provide evidence to their neighbors and to the citizenry at large that our immigration laws are being flouted and ignored. Through existing laws and enforcement procedures, the situation can only deteriorate, given the conditions in so much of the Third World, which is now the primary source of immigration and refugee flows to the U.S. At a time when we face the prospect of a tightened economy, the United States must set firm limits on entrants to assure that we do not take on burdens that we ourselves cannot handle.

Immigration and refugee policy reform is a perilous minefield of emotionally charged issues. One cannot but consider any such discussion as being about one's own ancestors and in some cases, about oneself. Further, it brings into question one's image of America's past, an assessment of America's present and, most difficult of all, the direction of America's future. There is a general consensus that reform is required, some clear restatement of where we stand. It is imperative that the debate concerning such needed reform be conducted in an atmosphere of calm, compassionate, and careful deliberations recognizing the difficulty of the question and the earnestness of those who will speak to it.

In my view, the fundamental obligation of the government of any nation, indeed the very reason for its existence is to promote the national interest--that is, the long-term welfare of the majority of its citizens and their descendants. Accordingly, I believe that U.S. immigration policy should be based on what would promote the well being of the American people. This would include the maintenance of specific benefits such as freedom, safety, an adequate standard of living, and political independence and stability. It also includes the preservation of cultural qualities and national institutions which contribute to these specific benefits--and the absence of which in many other countries is one of the direct causes of their relative lack of just such benefits.

The moving words on the Statue of Liberty are cited in nearly all discussions of U.S. immigration policy. The ideas expressed

THERE ARE MOST APPEALING AND ARE CERTAINLY CONSISTENT WITH THE TRADITIONAL HOSPITALITY AND CHARITY OF THE AMERICAN PEOPLE. HOWEVER, THIS GREAT COUNTRY IS NO LONGER ONE OF VAST, UNDEVELOPED SPACE AND RESOURCES, WITH A RELATIVELY SMALL POPULATION. IN THAT EARLIER TIME, THE NATION COULD WELCOME MILLIONS OF NEWCOMERS. SOME BROUGHT SKILLS. MANY OTHERS BROUGHT FEW SKILLS, BUT WERE WILLING TO WORK. IN A SMALLER AMERICA WITH A SIMPLER, LABOR INTENSIVE ECONOMY AND A LABOR SHORTAGE, THAT WAS OFTEN QUITE ENOUGH--THAT, PLUS THEIR GREAT DRIVE TO BECOME AMERICANS.

A 1980 STUDY BY DR. LEON F. BOUVIER SHOWS THAT EVEN IF NET IMMIGRATION EQUALS 750,000 PER YEAR; THE FERTILITY RATE OF THE EXISTING POPULATION AND ITS DESCENDANTS REMAINS AT ITS PRESENT LOW LEVEL; AND THE FERTILITY RATE OF NEW IMMIGRANTS IMMEDIATELY DECLINES TO THAT OF THE POPULATION AS A WHOLE; THE U.S. POPULATION IN THE YEAR 2080 WILL BE 300,000,000. IT IS QUITE POSSIBLE THAT NET IMMIGRATION CURRENTLY EQUALS OR SURPASSES THE 750,000 PER YEAR LEVEL.

THE BOUVIER STUDY ALSO SHOWS THAT UNDER THE ASSUMPTIONS ALREADY DESCRIBED, ONE-THIRD OF THE U.S. POPULATION IN 2080 WOULD CONSIST OF POST-1979 IMMIGRANTS AND THEIR DESCENDANTS. THIS FINDING HAS PROFOUND IMPLICATIONS BECAUSE CURRENT IMMIGRATION FLOWS ARE SUBSTANTIALLY DIFFERENT FROM PAST FLOWS IN ETHNICITY AND LANGUAGE CONCENTRATION.

I REALIZE THAT I AM ABOUT TO ENTER INTO A VERY SENSITIVE AREA AND THERE IS SOME RISK THAT WHAT I WILL SAY MAY BE MISUNDERSTOOD. SO, AT THE OUTSET, LET ME EMPHASIZE THAT I BELIEVE NO INDIVIDUAL APPLYING TO THIS COUNTRY LAWFULLY IN SEARCH OF FREEDOM AND OPPORTUNITY AND ANXIOUS TO ADAPT TO THIS COUNTRY'S POLITICAL INSTITUTIONS AND VALUES SHOULD BE DISCRIMINATED AGAINST BECAUSE OF COLOR, NATIONALITY OR RELIGION, AS WE HAVE SOMETIMES DONE IN THE NATION'S PAST. I AM VERY MUCH AWARE OF THE GREAT CONTRIBUTIONS MADE BY VARIOUS ETHNIC GROUPS TO THE WELL-BEING OF ALL AMERICANS.

IMMIGRATION TO THE UNITED STATES IS NOW DOMINATED TO A HIGH DEGREE BY PERSONS SPEAKING A SINGLE FOREIGN LANGUAGE, SPANISH, WHEN

ILLEGAL IMMIGRATION IS CONSIDERED. THE ASSIMILATION OF THE ENGLISH LANGUAGE AND OTHER ASPECTS OF AMERICAN CULTURE BY SPANISH-SPEAKING IMMIGRANTS APPEARS TO BE LESS RAPID AND COMPLETE THAN FOR OTHER GROUPS. A STUDY BY THE SELECT COMMISSION STAFF INDICATES THAT IMMIGRANTS FROM LATIN AMERICA BECOME CITIZENS AT A LOWER RATE THAN THOSE FROM OTHER REGIONS. IN PART THE APPARENTLY LOWER DEGREE OF ASSIMILATION MAY BE DUE TO THE PROXIMITY TO AND THE CONSTANT INFLUX OF NEW SPANSIH-SPEAKING ILLEGAL IMMIGRANTS FROM LATIN AMERICA, MANY OF WHOM REGARD THEIR STAY AS ONLY "TEMPORARY" AND THUS MAY NOT FEEL THE NEED OR DESIRE TO LEARN ENGLISH OR OTHERWISE ASSIMILATE; AND FINALLY THE GREATER TOLERANCE FOR BILINGUALISM AND "BICULTURALISM" IN RECENT YEARS, AT LEAST AMONG A MAJORITY OF LEGISLATORS, WHO HAVE ADOPTED GOVERNMENT POLICIES WHICH SEEM ACTUALLY TO PROMOTE LINGUISTIC AND CULTURAL SEPARATISM, POLICIES SUCH AS THE ADOPTION OF "BILINGUAL/ "BICULTURAL" EDUCATION AND FOREIGN LANGUAGE BALLOTS.

ALTHOUGH THE SUBJECT OF THE IMMEDIATE ECONOMIC IMPACT OF IMMIGRATION RECEIVES GREAT ATTENTION, ASSIMILATION TO FUNDAMENTAL AMERICAN PUBLIC VALUES AND INSTITUTIONS MAY BE OF FAR MORE IMPORTANCE TO THE FUTURE OF THE UNITED STATES. IF IMMIGRATION IS CONTINUED AT A HIGH LEVEL AND YET A SUBSTANTIAL PORTION OF THE NEWCOMERS AND THEIR DESCENDANTS DO NOT ASSIMILATE, THEY MAY CREATE IN AMERICA SOME OF THE SOCIAL, POLITICAL AND ECONOMIC PROBLEMS WHICH EXISTED IN THE COUNTRY WHICH THEY HAVE CHOSEN TO DEPART. IF LINGUISTIC AND CULTURAL SEPARATISM RISE ABOVE A CERTAIN LEVEL, THE UNITY AND POLITICAL STABILITY OF THE NATION WILL IN TIME BE SERIOUSLY ERODED.

WHAT, THEN, SHOULD BE THE DIRECTION OF NEW IMMIGRATION AND REFUGEE POLICIES? I DISCUSSED THIS ISSUE IN MORE DETAIL IN MY SUPPLEMENTAL STATEMENT FILED WITH THE SELECT COMMISSION'S FINAL REPORT. HERE I SHALL MERELY ITEMIZE A FEW KEY ELEMENTS OF MY MOST CURRENT THINKING ON THIS ISSUE: AN ABSOLUTE ANNUAL CEILING ON TOTAL IMMIGRANT AND REFUGEE ADMISSIONS; A SEPARATE ANNUAL CEILING FOR REFUGEE FLOW; MAINTENANCE OF THE PER-COUNTRY CEILING; REDUCTION OF IMMIGRATION BY RELATIVES OF U.S. CITIZENS AND PERMANENT RESIDENTS; SELECTION OF INDEPENDENT OR "SEED CATEGORY" IMMIGRANTS ON THE BASIS OF TRADES WHICH WOULD BENEFIT THE U.S. ECONOMY OR CULTURE, PROTECT AMERICAN WORKERS, AND EASE ASSIMILATION (INCLUDING PERHAPS SOME FORM OF PREFERENCE FOR

THOSE WITH ENGLISH COMPETENCE); AND FINALLY, ELIMINATION OF FEDERAL POLICIES WHICH ENCOURAGE LINGUISTIC AND CULTURAL SEPARATION.

WE ARE AWARE THAT THROUGHOUT THE WORLD THERE CONSTANT PRESSURES AND DISRUPTIONS WHICH CAUSE PEOPLE TO SEEK OUR SHORES. WE AS A NATION ARE PROUD THAT THIS IS THE CASE, AND I AM SURE THAT WE ALL WISH WE COULD TAKE WITHIN OUR BORDERS ALL THAT WISH TO COME. THAT IS CLEARLY IMPOSSIBLE. THE REFUGEE FIGURE IS GROWING EXTREMELY RAPIDLY. LAST YEAR THERE WERE 13 MILLION. THIS YEAR 16 MILLION. AND THE IMMIGRANT DEMAND ALSO CONTINUES TO GROW.

WE MUST BE CLEAR AND FIRM ON HOW MANY PEOPLE MAY ENTER. IT IS ONLY FAIR TO THOSE WHO ARE ALREADY HERE, TO OUR OWN ECONOMIC GROWTH, AND TO THE NEEDS OF OUR COUNTRY. I BELIEVE THAT A SEPARATE ANNUAL CEILING SHOULD BE SET FOR REFUGEES. REFUGEES ARE QUITE DIFFERENT THAN IMMIGRANTS. REFUGEES COME SINCE THEY FEAR PERSECUTION BECAUSE OF THEIR POLITICAL BELIEFS OR THEIR SOCIAL OR ETHNIC CASTE. WE OPEN OUR DOORS TO THEM FOR HUMANITARIAN PURPOSES AND ALSO AS A RECOGNITION THAT WE AS A COUNTRY HAVE A DEMOCRATIC TRADITION WHICH PERMITS PEOPLE OF DIFFERENT BELIEFS, IDEAS, AND ETHNIC BACKGROUNDS TO COME AND PARTICIPATE FULLY IN THE LIFE OF OUR COUNTRY. OUR IMMIGRATION POLICY TRADITIONALLY HAS BEEN BASED ON VIEWING OUR LAND AS ONE OF ECONOMIC OPPORTUNITY SEEKING OUT PERSONS WHO WILL CONTRIBUTE THEIR OWN SPECIAL SKILLS TO OUR COUNTRY'S GROWTH.

AT PRESENT OVER 94 PERCENT OF ALL IMMIGRANTS WHO ENTER THE UNITED STATES COME AS PART OF THE FAMILY REUNIFICATION PREFERENCES ESTABLISHED UNDER OUR IMMIGRATION LAW. I UNDERSTAND THE IMPORTANCE OF THE FAMILY UNIT, BUT OUR IMMIGRATION ACT IS INTENDED AS ONE OF ECONOMIC OPPORTUNITY TO RELATE TO THE NEEDS AND CAPABILITIES OF MANY COUNTRIES AND MANY PEOPLES THROUGHOUT THE WORLD. THE OVERWHELMING DOMINANCE OF FAMILY REUNIFICATION IN PRACTICE GOES BEYOND THESE BASIC PURPOSES AND LIMITS OUR RECEPTIVITY AND BREADTH OF OUTREACH.

"NEW SEED" IMMIGRANTS ARE THOSE WHO CAN MAKE THE MAXIMUM CONTRIBUTION TO OUR COUNTRY. GIVEN THE GREAT MANY WHO WISH TO COME HERE, THE SELECTION PROCESS IS A DIFFICULT ONE. AND STILL WE DO NOT KNOW ENOUGH TO PREDICT WHO IN THE LONG RUN WILL MAKE THE MAXIMUM CONTRIBUTION TO OUR COUNTRY. BUT IT IS NOT INAPPROPRIATE TO TRY TO ACCEPT THOSE WHO ARE LIKELY TO MOVE RAPIDLY AND EASILY

INTO OUR POLITICAL, ECONOMIC AND COMMUNITY LIFE AND TO MAKE A MAXIMUM CONTRIBUTION TO IT.

IN ADDITION, THE U.S. SHOULD IMPROVE ITS ENFORCEMENT CAPABILITY. THE RECOMMENDATIONS OF THE SELECT COMMISSION IN THIS AREA SHOULD BE CAREFULLY CONSIDERED. I FEEL STRONGLY THAT THE NEW ENFORCEMENT PROGRAM MUST INCLUDE SANCTIONS AGAINST EMPLOYERS WHO HIRE AND EXPLOIT ILLEGAL ALIENS, PLUS SOME NEW METHOD TO VERIFY WORK AUTHORIZATION. WE MUST PRESENT A NEW AND SECURE SYSTEM TO ENSURE THAT JOB APPLICANTS ARE AUTHORIZED TO WORK LEGALLY IN THE U.S. WE OWE THAT, NOT ONLY TO THOSE WHO COME LEGALLY AND TO OUR CITIZENS WHO ARE SEEKING WORK IN THIS COUNTRY, BUT ALSO TO THE EMPLOYERS WHO HIRE THEM. AMONG THE SEVERAL SUGGESTIONS PRESENTED THUS FAR IS ONE TO OBTAIN A SECURE, COUNTERFEIT-RESISTANT TYPE OF IDENTIFICATION PERMIT FOR ALL WORKERS, ONE THAT WOULD NOT BE REQUIRED TO BE CARRIED ON THE PERSON, BUT WHICH WOULD BE PRESENTED ONLY AT THE TIME OF SEEKING EMPLOYMENT. THE PERMIT, IF USED, MIGHT SIMPLY SAY, "I AM AUTHORIZED TO WORK AND BE EMPLOYED IN THE UNITED STATES OF AMERICA." IT IS ALSO POSSIBLE THAT WORK AUTHORITY INFORMATION COULD BE ENTERED INTO A DATA BANK SUCH AS IS USED FOR CREDIT CARDS. THE EMPLOYER WOULD PROCESS THE NUMBER CONTAINED ON THE CARD AND THE ONLY RESPONSE RETURNED IS THAT THE APPLICANT IS "CLEAR" OR "NOT CLEAR" FOR EMPLOYMENT. AT PRESENT THE SOCIAL SECURITY CARD, WHICH IS WIDELY USED, IS ALSO WIDELY ABUSED. AS EFFORTS ARE BEING MADE TO UPGRADE THE SECURITY OF THAT CARD, IT MAY BE THAT IT COULD ALSO BE USED IN CONNECTION WITH SUCH AN EMPLOYER SANCTION-WORK AUTHORIZATION PROGRAM.

WHICHEVER METHOD IS CHOSEN, IT IS CRUCIAL THAT WE SEND OUT A SIGNAL TO THE WORLD THAT IN ORDER TO OBTAIN EMPLOYMENT IN THE UNITED STATES ONE NEEDS TO OBTAIN AND PRESENT EVIDENCE OF VALID WORK AUTHORIZATION.

ONCE WE HAVE A PROGRAM WHICH HAS BEEN SHOWN TO BE EFFECTIVE IN SUBSTANTIALLY CONTROLLING ILLEGAL IMMIGRATION, A "LEGALIZATION" OR AMNESTY PROGRAM WOULD SEEM APPROPRIATE. WE WOULD THEN HAVE MUCH MORE EFFECTIVE WAYS OF EXPENDING OUR LIMITED ENFORCEMENT DOLLARS THAN IN THE ATTEMPT TO DETERMINE THE LEGALITY OF LONG TERM RESIDENTS WHO HAD MANAGED TO REMAIN IN THE U.S. DESPITE EMPLOYER SANCTIONS.

In addition to reducing the "pull" of U.S. employment, we should try to change the conditions abroad which "push" people toward our borders. That would be accomplished by assisting people to improve the quality of life in their own country. In this effort, the best gift of the heart which the U.S. could provide would be the clear communication of the basis for our success. Financial aid by itself it frequently ineffective, often because of the same government policies which are responsible for the economic problems. It is no coincidence that America has been a symbol of both freedom and prosperity. These two are intimately connected and both rest on certain traditional values and cultural traits. This is a theme which should be fully developed and communicated to the world in a much more effective way than we have been able to do to date.

As I have stated Immigration and Refugee policy reform is an emotionally charged issue, fraught with perils, but it is imperative for the sake of America's future that needed reforms be accomplished. Chairman Mazzoli and I, and the ranking members of the two Subcommittees, Senator Kennedy and Congressman Fish, and others on our Subcommittees, are eager to hear from those who have studied this question or have strong feelings about it. We will do so in the recognition that we are an open society both with respect to those who come and those who are here who wish to participate in the political debate.

STATEMENT BY SENATOR STROM THURMOND (R-SC) BEFORE THE SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY REFERENCE HEARINGS ON THE FINAL REPORT OF THE SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY, MAY 5, 1981, ROOM 2228, 2:00 P.M.

MR. CHAIRMAN:

First, I want to congratulate you and the other members of the Senate Judiciary Committee, Senator Kennedy, Senator Mathias, and Senator DeConcini for serving on the Select Commission these past two years. You have dedicated many hours of hard work to this most important area of legal and foreign policy. I know all Members of the Senate appreciate your efforts.

I should also thank on behalf of the Senate the Chairman of the House Subcommittee, Mr. Mazzoli, and the other House Members, as well as the public members of the Select Commission for their time and energies in this endeavor.

Mr. Chairman, I welcome the beginning of these joint hearings on the Select Commission's final report. As you know, I am vitally interested in the area of immigration and refugee policy. As the ranking member of the Subcommittee on Immigration and Refugee Policy, and as Chairman of the full Committee, I want to assure members that these matters will receive prompt and full attention in the Senate Judiciary Committee.

The scope of the Select Commission's report was broad, but comprehensive. Some of the recommendations have my full support, while others will be the subject of considerable debate and review by both committees of the House and Senate. There are a number of important issues such as the creation of employee sanctions, legalization of certain illegal aliens now in the United States, increases in border enforcement, and the use of counterfeit-resistant cards for identification purposes that deserve our attention.

In addition, the Congress must address the important issue of immigrant and non-immigrant admissions on an annual basis. The number at which a ceiling for admissions shall be placed and the criteria for those who will be permitted to enter must be established with the best interests of the United States in mind, while fully recognizing the need for an open, but fair admission policy for aliens.

Mr. Chairman, our experiences of the last few years with great numbers of political refugees and others seeking asylum in the United States mandate that the appropriate laws, such as the Refugee Act of 1980, be amended to deal decisively with these emergency situations. Federal financing of refugees must be limited to a period that offers the most good, but does not become another Federal welfare program.

All of these objectives can be resolved, I believe, in a way that will gain the support of the American people, yet preserve our traditions for being a great Country capable of assimilating peoples of other nations and cultures.

I look forward to working with all of you on these matters and I welcome our public witnesses to the Committee this afternoon.

Senator SIMPSON. This is a joint Congressional hearing. I think you'll find that such a procedure is nearly unprecedented. I understand the last such hearing was some 30 years ago, and then both Houses of Congress were controlled by my good colleagues on the other side of the aisle. Such is not the case at present.

Chairman Mazzoli and I trust that the fact that we are able to work together so closely on this issue despite our differing party affiliations, will indeed clearly demonstrate the absolute necessity for a bipartisan revision of our Nation's immigration and refugee policy. Now each legislative body is fully aware of that.

We also believe that the joint hearing process and the close consultations between the two Houses will lead us to the development and enactment of legislative reforms which are so critically needed in this country.

These initial hearings are rather singly intended to obtain public response to the final report of the Select Commission on Immigration and Refugee Policy. We hope by that procedure to learn more of the nature of immigration and refugee policies, and also to assess the political reality and environment in which the coming debate will be conducted.

Our goal, of course, is to develop policies and specific legislative proposals which will both satisfy the needs and interests of the American people and have a strong basis on those ideas which can be successfully enacted into law. Shakespeare would have said, "Aye, there's the rub."

Once we have completed these general hearings, we should be in a much better position to determine what hearings will be conducted on particular issues in the future and, with what witnesses. We certainly anticipate a full response from our congressional colleagues, many of whom wished to testify today.

After these hearings we will determine what legislative strategies will be most appropriate to meet our goals of formulating very substantive reform which will be based as I say, on the political realities faced by our colleagues on both sides of the aisle.

I am greatly looking forward to working with Chairman Mazzoli. I have come to have a great regard and personal respect for him since I met him early in my first months here. I think we will work well together. He has been extraordinarily supportive and cooperative during this hearing.

And I want to pay particular respect to the ranking member of this subcommittee, Senator Ted Kennedy, who has been deeply involved in this issue during his entire time in the U.S. Senate. He chaired this subcommittee for many years. It was of such import to him that when he became chairman he pulled this issue into the full committee instead of delegating it to a subcommittee. He has extended full cooperation and courtesy.

I enjoyed my service on the Select Commission on Immigration and Refugee Policy. To call it a unique experience would be a great understatement. The Commissioners were a rather diverse and determined group indeed, with a very fine staff, and I pay tribute to that staff at this time. It was my honor and privilege to be a member of the Commission.

The leadoff hitter in today's batting order will be the Chairman of the Select Commission, Father Ted Hesburgh. Father Hesburgh did a most extraordinary job in that capacity, a true humanitarian and a man who gives much of himself to any issue in which he becomes involved. Without his innate skills of reconciliation, compassion and direction, the task would have been long and labored.

During the next 2 years, this Congress will have an extraordinary opportunity to perform its function by reforming the immigration and refugee policy of the United States. I just don't believe that public awareness, sensitivity and interest in this issue has ever been at such high level. The 2-year effort of the Select Commission will be serving us as a basis for discussion and legislation for many years to come. It was the most ambitious project of its kind in over 50 years.

I am about to use up the final 2 minutes of my alloted 5—don't worry, I won't go on at great lengths. Several things we do know. The current flow of immigrants and refugees to the United States is out of control. We do not know how many people enter each year; nor can we control how many will come. The total number of illegal immigrants cannot be precisely determined. This provides evidence to our citizens that our immigration laws are being flouted and ignored.

The Select Commission made certain suggestions and proposals. We will pursue some of those. We will listen. We will also listen carefully to those who feel very threatened or ignored by the recommendations of this Commission.

The fundamental obligation of this country and the very reason for its existence is indeed to promote the national interest. That is our long-term goal.

Immigration policy is a perilous minefield of emotionally charged issues. We have already found that. One cannot consider any discussion without reflecting upon one's own ancestors, and about oneself. It brings into question the image of America's past, the language on the Statue of Liberty, an assessment of our future, and most importantly, where we go from here.

But there is a clear consensus that reform is required. Some restatement of where we stand must be presented. It is imperative, I think, that the debates concerning this needed reform be conducted in an atmosphere of calm, compassion, and very careful deliberation, recognizing the difficulty of the question and the earnestness of those who speak to it.

There will be a lot of room for discussion, and I and the members of the Senate subcommittee and the House subcommittee are eager to hear from those who have studied the question and have deep and strong feelings. We will hear this testimony in recognition that we are an open society, both with respect to those who come to our shores and those who are here wishing to participate in this political debate.

Reforms will be accomplished; I think they must be. Chairman Mazzoli and I are determined that they will be enacted, and fairly so. And with that I would recognize my cochairman, Congressman Ron Mazzoli of Kentucky.

Representative **Mazzoli**. Mr. Chairman, thank you very much. With your permission, I will have my lengthier statement made a part of the record and lead off with just a very few comments before recognizing my colleagues, whom I thank very much for departing one of the most important debates of the year to join us today.

Let me say that it has been a great pleasure to work with Senator Simpson. I noted today his quotation of the bard, and I say how can you have anything but admiration for a Wyoming cowboy who quotes Shakespeare? He is a very interesting and colorful gentleman and a very astute master of the legislative art. He is a person who has been at this point one of the leaders in the Nation in trying to reform and refresh and modernize our Nation's refugee and immigration policies.

I served in a very peripheral capacity in the work of the Commission. My friend, whom I will speak about momentarily from South Bend, Ind., was nice enough to suggest to my chairman that I be assigned in a sense indirectly to the Commission before I really took position as chairman of the subcommittee. It therefore gave me a chance to sit in on two separate meetings of the Commission, to meet its personnel, to see how it operated and functioned.

And for those of you who may not have attended the sessions, though I'm sure many of you did, the Commission, men and women from all parts of the country, approached their jobs with great diligence and seriousness of purpose. And I think that the report before us, Mr. Chairman, reflects that. It is comprehensive. It deals with thorny and politically very explosive issues, but it deals with them in an evenhanded and sensible fashion.

The report that the Commission has filed, which is the first report of its kind since the early 1900's, will as that report did, touch off a national debate, which I think is healthy and necessary, and will lead to what we hope are much more constructive solutions than were the result of that earlier report.

Let me commend the gentleman from Wyoming, our chairman today, and his staff who have just been wonderful to work with in setting up these meetings. Senator Simpson only alluded to the difficulty. It has been nothing but a minefield of its own to try to work with two committees getting all the logistics worked out, and the other plans.

So I want to thank Al and his people for having been thoroughly delightful to work with in setting up today's meeting.

I hope today's meeting is more than just a meeting of two committees. I hope that the people who are here view this to be what it is meant to be: An indication of the kind of congeniality and good chemistry that exists between our two panels, an indication clearly of the devotion that we both have to getting something out of the Congress and not have this Commission report simply gather dust.

So Mr. Chairman, I want to thank you for having put at our disposal all of your good offices, and we thank you.

Finally, let me pay tribute to the gentleman who is our leadoff witness today, whose path and mine have intertwined for the last 30 years. Father Hesburgh became president of the University of Notre Dame during my sophomore year, 1952. And to show you how the circle closes, we have a son who is a sophomore at Notre Dame in 1982.

So this 30-year period, three decades, has been extremely busy, one in which Father Hesburgh has shown in education and religious matters and governmental matters a sense of leadership which I think is striking. It certainly is a great tribute to the congregation of Holy Cross and to the University of Notre Dame.

I would just like to add as Senator Simpson has said, that there has been a leadership shown here which is rare and uncommon It is only by virtue of that kind of reconciliation and leadership that we are where we are today.

So I want to thank you, Father, for taking time out of your blistering schedule to be with us today.

Mr. Chairman, that ends my remarks and thank you very much.

Senator SIMPSON. Thank you so much, Chairman Mazzoli.

[The opening statement of Representative Mazzoli follows:]

OPENING STATEMENT OF
HONORABLE ROMANO L. MAZZOLI
CHAIRMAN
SUBCOMMITTEE ON IMMIGRATION, REFUGEES, AND INTERNATIONAL LAW
MAY 5, 1981

CHAIRMAN SIMPSON, COLLEAGUES FROM THE HOUSE SUBCOMMITTEE, AND COLLEAGUES FROM THE SENATE SUBCOMMITTEE:

THE REPORT OF THE SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY, CREATED BY CONGRESS, CONSTITUTES THE FIRST MAJOR EFFORT SINCE 1911 BY A JOINT CONGRESSIONAL/PRESIDENTIAL COMMISSION TO EXAMINE THE IMMIGRATION AND REFUGEE LAWS OF THE UNITED STATES.

HISTORICALLY, SUCH REPORTS HAVE GENERATED A MAJOR RE-THINKING IN CONGRESS AND ACROSS THE COUNTRY OF THE LAW. I EXPECT THIS REPORT WILL HAVE THE SAME EFFECT.

OUR NATION'S IMMIGRATION AND REFUGEE POLICY AFFECTS THE LIVES OF MILLIONS OF HUMAN BEINGS, NOT JUST HERE IN THE UNITED STATES, BUT THROUGHOUT THE WORLD. CHANGES IN THESE POLICIES AND LAWS HAVE MORAL, POLITICAL, ECONOMIC AND SOCIAL IMPLICATIONS, BOTH HERE AT HOME AND ABROAD. THEREFORE, THESE CHANGES MUST BE APPROACHED SENSITIVELY AND CAREFULLY.

TODAY THERE IS A GENERAL DISSATISFACTION IN THE UNITED STATES WITH OUR PRESENT IMMIGRATION AND REFUGEE POLICIES. AS CHAIRMAN OF THE HOUSE SUBCOMMITTEE WITH JURISDICTION OVER

THESE POLICIES, I HAVE BEEN SURPRISED AND EVEN DISMAYED TO LEARN FIRSTHAND IN WHAT LOW ESTEEM THE PRESENT LAW IS HELD BY MANY OF MY COLLEAGUES AND LARGE SEGMENTS OF THE AMERICAN PEOPLE.

IT IS, THEREFORE, MOST SUITABLE THAT THERE BE RECOMMENDATIONS - LIKE THAT MADE BY THE SELECT COMMISSION UNDER THE DISTINGUISHED LEADERSHIP OF MY FRIEND AND PRESIDENT OF MY ALMA MATER, NOTRE DAME, FATHER THEODORE HESBURGH - TO RESTRUCTURE TODAY'S IMMIGRATION AND REFUGEE POLICY.

LET ME TAKE THIS OPPORTUNITY TO COMPLEMENT AND COMMEND FATHER TED AND ALL HIS COLLEAGUES - SOME OF WHOM SIT WITH US TODAY AS MEMBERS OF THESE TWO SUBCOMMITTEES - FOR THEIR DILIGENT LABOR AND THE EXCELLENT WORK PRODUCT THEY ISSUED.

THE SELECT COMMISSION HAS PERFORMED ITS TASK ADMIRABLY. NOW IT IS TIME FOR CONGRESS TO ACT.

WE HAVE BEFORE US THE REPORT OF THE SELECT COMMISSION AND SEVERAL ALTERNATIVES OFFERED BY CONGRESSIONAL COLLEAGUES AND BY INTEREST GROUPS. SOON WE WILL HAVE BEFORE US THE RECOMMENDATIONS AND REACTIONS OF THE ADMINISTRATION.

THESE THREE DAYS OF HEARINGS ARE ONLY A BEGINNING OF THE WORK THESE TWO SUBCOMMITTEES AND, ULTIMATELY, THE CONGRESS FACE IN THE MONTHS AHEAD IN CRAFTING AN EQUITABLE, WORKABLE, ENFORCEABLE AND REASONABLE LAW.

NO SUCH LAW CAN BE PASSED EXCEPT IN A SPIRIT OF COOPERATION AMONG AND BETWEEN HOUSE AND SENATE, LEGISLATIVE AND

Executive Branches, Democrat and Republican, liberal and conservative. The issues are too difficult and the possible solutions too controversial for us to be able to achieve anything through conflict. Cooperation has to be our method and our goal. Otherwise, the whole exercise will be for naught.

These initial hearings are designed to elicit a wide range of viewpoints on the Select Commission report. Because of time limitations, our joint panels could not accommodate every person and group who asked to appear.

In this connection, it should be kept in mind that many more hearings will be conducted in the months ahead in the Senate and the House separately and, perhaps, even in the joint arrangements we will use today.

Those who could not be accommodated in this first round of hearings will be given every chance to advance their positions and views.

One further word about the position of the Administration on the issues raised in the Select Commission report is necessary.

President Reagan has created a Task Force headed by Attorney General William French Smith, to which representatives from all the departments and agencies of the Executive Branch have been appointed, to recommend immigration and refugee policies the Administration should support and, of course, those it should reject or reformulate. That Task Force is just about to report to the President.

I HOPE THAT MR. REAGAN WILL SOON BE ABLE TO REACH FINAL POSITIONS ON THESE DIFFICULT ISSUES. HIS VIEWS WILL NOT BIND OR CONTROL THE CONGRESS, BUT, MOST ASSUREDLY, THEY WILL BE HELPFUL TO US IN OUR DELIBERATIONS.

IN CLOSING, I WANT TO THANK SENATOR SIMPSON AND HIS SENATE COLLEAGUES FOR HOSTING OUR FIRST JOINT HEARING. THESE ARE UNUSUAL, AND A FEW EYEBROWS WERE RAISED WHEN WE PROPOSED THE IDEA OF JOINT HEARINGS; HOWEVER, WE WERE DETERMINED TO DEMONSTRATE TO OUR COLLEAGUES AND THE AMERICAN PEOPLE THAT WE, AND OUR TWO PANELS, AND OUR TWO HOUSES, INTEND TO TACKLE THESE DIFFICULT CHALLENGES PRESENTED TO US IN A SPIRIT OF COOPERATION AND COLLEGIALITY.

I WANT TO THANK ALSO MY COLLEAGUES, AND CHAIRMAN PETER RODINO OF THE FULL JUDICIARY COMMITTEE FOR THEIR SUPPORTIVE ASSISTANCE IN ARRANGING THESE JOINT HEARINGS.

I LOOK FORWARD TO HEARING FROM THE WITNESSES WHO WILL BE APPEARING BEFORE US, AND LOOK FORWARD TO WORKING WITH THE OTHER MEMBERS OF THE SUBCOMMITTEES IN THIS VENTURE.

Senator SIMPSON. You weren't here, Ted, when I gave all the good words about you. Should I rerun those comments?

Senator KENNEDY. I haven't heard those very often lately.

Senator SIMPSON. Let me just introduce the ranking member of this subcommittee, who, with his staff, has been most extraordinarily cooperative and helpful. You must realize the true intensity of the interest of this gentleman, who chaired this subcommittee for many, many years and then took it to the full committee level when he became chairman of the Judiciary Committee. His absolute dedication to the issue is without parallel in the Congress. Senator Kennedy.

OPENING STATEMENT OF HON. EDWARD M. KENNEDY, A U.S. SENATOR FROM THE STATE OF MASSUCHUSETTS

Senator KENNEDY. Thank you very much, Mr. Chairman.

I too want to express on behalf of all the minority members of this subcommittee how appreciative we are over your efforts and Congressman Mazzoli's in trying to bring some important and meaningful and compassionate as well as long-term reforms to our immigration laws. I think now is the time, in the words of Martin Luther King from a Birmingham jail, when he was talking about progress in another important area of human rights. Now is the time for this Congress to face this issue and to come to grips with it.

I think we are extremely fortunate at this time to have the kind of materials that have been developed in the form of the Select Commission's report and recommendations. It has been three decades since we have thoroughly reviewed our immigration statue which was fashioned over 50 years ago.

Today these years of neglect have come to an end. In launching these joint hearings we are moving down the road to immigration reform started 2 years ago with the establishment of the Select Commission on Immigration and Refugee Policy. For the first time since 1953, a high-level Commission has studied all aspects of our immigration laws.

Whether we are largely supportive or critical of the Select Commission's findings and recommendations, we can all agree that its report represents a long-needed catalyst for action. I believe these joint hearings symbolize the importance we attach to this work of the Select Commission, and will signal the urgency we feel over the need to move on immigration reform.

By neglecting immigration for so many years, Congress allowed one of the country's oldest traditions to become one of our most controversial and misunderstood issues. Instead of embracing our immigrant heritage, many Americans have come to fear it.

In part, this reflects the mood of our times, and our preoccupation with stubborn and increasingly critical challenges at home and abroad. But part of the problem derives as well from our immigration law, which is out of touch with the times and out of control.

To restore faith in our immigration laws—to establish an immigration policy that is both in America's longrun interests as well as faithful to our humanitarian traditions—we must move on the proposals offered by the Select Commission.

I am confident that with the bipartisan spirit already demonstrated in the arrangement of these joint hearings—and with the cooperation already evident in the actions of our subcommittee chairmen—we will see some of the Select Commission's proposals translated into law in this Congress.

So I agree that we now have the source material—the Select Commission's report—which I think we as a committee should be envious of as we start our consideration of an area of public policy of enormous importance and interest—an issue of public policy which in so many instances is misunderstood, and where there has been so much emotion, but also an issue which touches at the fiber of this very Nation—our immigration policy and refugee policy.

I think all of us on the Senate Judiciary Committee, including the minority members, feel that, as you have indicated so well, Mr. Chairman, that this is really a nonpartisan issue and the efforts that you have taken have been, speaking for the minority, one of fairness and consideration of all different viewpoints. I just want to indicate to you on behalf of all the Democrats a pledge and a desire to work closely with you to try to meet our responsibilities in a way which is going to respond to the central challenge of our time on this issue of immigration and undocumented aliens, the issues of amnesty and the issues of refugees.

I thank you for your kind remarks, Mr. Chairman, and look forward to the work that lies ahead.

Senator **Simpson**. Thank you so much, Senator Kennedy. I am appreciative.

Now let me recognize the ranking member of the House subcommittee, Congressman Fish, who has labored in this particular field during his long and illustrious legislative career. He was also a most important and impressive member of the Select Commission. He met every task he was assigned, and he was most helpful to me as a fellow Commissioner. I would introduce the ranking Republican of the House subcommittee, the Congressman from New York, Ham Fish.

OPENING STATEMENT OF HON. HAMILTON FISH, A U.S. REPRESENTATIVE FROM NEW YORK

Representative **Fish**. Thank you very much, Mr. Chairman. I want to compliment both chairmen of the subcommittees for organizing these joint hearings on the report of the Select Commission on Immigration and Refugee Policy.

I believe that if we are to realize any tangible results from the labors of the 16 Commissioners and particularly the Chairman of the Commission for the past 2 years, that both Houses of the Congress must achieve a high level of general appreciation and understanding of the immigration and refugee problems that face us. These issues are extremely complex and not given to easy solutions.

We are also aware that whatever actions the Congress takes in these measures recommended to us will directly affect all segments of our society.

Having served as a Commissioner involved in most of the deliberations of the Commission, both formal and informal meetings, I want to commend first of all Father Ted, the Commission Chairman, and Dr. Larry Fuchs, the Executive Director, for having undertaken and accomplished the most difficult task. Not since 1965 have we had such an in-depth study of our immigration policies, and those familiar with immigration and refugee development since that year must agree that a comprehensive review was long overdue and that a consensus had to be reached to respond to dramatic changes that have occurred in the intervening 15 years.

I, for one, would like to say that the Select Commission succeeded in identifying the issues and the problems that face us. As to the recommendations and conclusions of the Commission, some were specific and received the general support of the Commissioners. Some of them, however, had to be deferred to the decision of the Congress, with the Commission limiting itself to a statement of principle.

The joint hearings, which have been scheduled for the next 3 days, will enable us who serve on the subcommittees dealing with immigration and refugee matters to review those recommendations which were adopted by the Commissioners. Even more importantly, I hope the witnesses will amplify Commission decisions and flesh out where possible those principles where specifics were left by the Commissioners to the wisdom of the Congress. I think that would be an enormous help for us, as we address those issues.

Again I congratulate you, Mr. Chairman, and the chairman of my subcommittee, for organizing these hearings.

Senator SIMPSON. Thank you. Let me recognize at this time Congressman Mazzoli.

Representative MAZZOLI. Mr. Chairman, thank you very much. I just think it ought to be noted that every one of our Members is here today. This has characterized the work of this panel the entire time that I have had the privilege of chairing it. It is remarkable. We even showed up en masse at the first day of our recent recess, the so-called Easter work period. I really want to thank my friends.

Second, I think it ought to be noted too that we have another Notre Dame man here, Congressman Dan Lungren, who is a graduate of the University of Notre Dame. The panel, despite what Ham Fish says, wasn't stacked against any other college. It just happened to work out this way.

Thank you, Mr. Chairman.

Senator SIMPSON. Thank you very much, and we will have our work cut out for us when we show up over on your side of the Capitol. We will all be there, obviously.

Let me in one swift moment of time recognize Dr. Larry Fuchs, who served as our Executive Director of the Commission, and is here today. It would be very untoward not to recognize that he was the very central core of the staff operation. His services were characterized in three words: Patience, patience, patience. Thank you.

Now to our first witness. The biographical information on this gentleman would overflow the table. I will go no further, just to say that I have come to know this man during these past 2 years. He is not only an extraordinary public figure; he is a most extraordinary private individual and a most remarkable gentleman, a marvelous counselor and reconciler of this rambunctious Select Commission. Let me just recognize and express deep appreciation in that you changed your schedule to be here, Father Ted. Thank you.

STATEMENT OF REV. THEODORE HESBURGH, CHAIRMAN, SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY, ACCOMPANIED BY LAWRENCE H. FUCHS, EXECUTIVE DIRECTOR OF THE COMMISSION, AND RALPH THOMAS, DEPUTY DIRECTOR OF THE COMMISSION

Reverend **Hesburgh**. Senator Simpson, Congressman Mazzoli, Senator Kennedy, Congresspersons Hall, Schroeder, Frank, Fish, Lungren, and McCollum, thank you very much for the privilege of being with you here today as opening witness.

My name is Theodore M. Hesburgh and I am here as the former Chairman of the Select Commission on Immigration and Refugee Policy, which expired on April 30, a few days ago.

I have with me on my left Dr. Lawrence H. Fuchs, who served as the Executive Director of the Commission, and Dr. Ralph Thomas, his deputy.

I must say to all of you that I have never seen a Washington staff worked harder than this staff worked, as you will see later from some of the work that sits here on the table, two 1,000-page volumes. As the final days approached, in order to get these out, the staff actually worked 40 hours in a row without surcease. That kind of dedication and devotion made all of us on the Commission look very good.

I should also say at this point how grateful I am to the other 15 members of this Select Commission, all of whom were dedicated, all of whom sacrificed themselves to go to hearings, to attend public meetings, to read mountains of paper and to give us their frank and honest and conscientious opinion on policy.

Someone observed that almost half of our final report was taken up with special opinions of the various members of the Commission. I thought that was all to the good because it reflected both the complexity of the issue, the honest difference of opinion that exists in so many of the areas we discussed, and the kind of total honesty of this Commission to say first of all, this is a report we endorse in the majority, but these are misgivings we might have about certain aspects of it. And I think it is a richer report because of that and I suspect that many of the opinions, minority opinions of individual members, will be reflected in the discussion as it emerges.

Our Commission was unusual in two respects. First, it was initiated by the Congress, and one half of its membership was from the Congress on a bipartisan basis. Second, and a related point, it was intended not just to study a problem and to make general long-term recommendations, but to make specific recommendations to reform an extremely complicated law. It has been said on many occasions that the Immigration and Nationality Act is only second to the tax legislation in its complexity.

Our Commission held 12 regional public hearings, mainly at ports of entry for immigrants, places like Baltimore, Miami, New Orleans, Los Angeles, San Francisco, et cetera. We conducted 24 public consultations with experts. We sponsored a considerable amount of original research, and we systematically reviewed all existing research. And after seven public Commission hearings, we reported our recommendations to the Congress and to the President on February 27 of this year.

Within the past week, you had delivered to you the Select Commission's staff draft of a new Immigration and Nationality Act based on the recommendations of the Commission. This is the volume here. These particular volumes comprise untold hours of discussion and over 1,000 pages of recommendations, and I hope they will be useful in the further discussion that will issue from the two subcommittees.

I strongly hope that the Members of Congress who served on the Commission officially, and Representative Mazzoli who participated in our deliberations in December and January when we took final votes on our report, will introduce this bill as a working bill. I know of no better way to get the executive branch, the Congress and the public generally to put this extremely important topic on their agenda than to have the particulars of a working bill to address.

I thought it might be valuable to the Congress for you to have a clear picture of just how the Commission went about its business, and for the record, I would like to submit a work chart which depicts that very graphically over the 2 years of the Commission's life. Within the next 10 days you will receive an additional 11 volumes completed by the staff last week as they worked through the nights of April 29 and 30 to ready this material for the printers. We have the staff recommendation here in this particular pile of volumes.

Of the volumes you will receive, the first of them is most important and that is the volume right here. This is the why and how companion volume to the final Commission report. We call it a staff report. It is a supplement to the official final report of the Select Commission on Immigration and Refugee Policy, and it provides a detailed analysis of the major recommendations made by the Commission and the implementation strategies and procedures for carrying them out. I believe this will be most useful to the staff and to the subcommittees.

Now the final report, which is also here on the table, is in your hands. But the problems raised by immigration face every one of us and they will not go away; indeed, they will grow in intensity, I believe.

Some among us, often moved by deeply religious values, ask the question, why should immigration be a problem? Why shouldn't people be free to move wherever they want to? We are all one species, all children of one God, and from the beginning of time human beings have been a curious migratory species. Why not let down the barrier of nation-states and permit people to move freely?

The questions almost answer themselves. Immigration is a problem because nearly all peoples believe in nationalism, in nation-states in which to maintain the integrity of national ideologies, institutions, and boundaries. We believe this in the United States, too, but not for narrow nationalistic purposes only, but also because we believe that our Nation has become a symbol of the possibilities of freedom and the potentiality for justice in a world which sees little of either.

The existence of our Nation as a nation is tied to the realization of high goals for all of humanity. Our nationalism is not inconsistent with internationalism. In fact, the first of the three principles which undergird this Commission's important recommendations is the principle of international cooperation. As a nation, we cannot survive without international cooperation. We live in a constant state of interdependence. Consequently, the Select Commission has made several recommendations guided by that principle.

The second of our important principles is the rule of law. To the Commission, the rule of law meant two things: First, enforcing the limits we set for immigration in a firm, unambiguous manner, and second, doing so with high standards of due process. Dozens of the Commission recommendations are guided by the principle of the rule of law.

Our third principle was that of the open society and how few of them there are in today's world. By the open society we mean certain specific things. We mean that it is in the national interest of the United States to accept a reasonable number of immigrants and refugees each year to fulfill the U.S. policy goals regardless of the color, nationality, or the religion of those admitted. It also means that once admitted to this country, these people should be entitled to get on a fast track to citizenship under the protection of the U.S. Constitution and the laws of this land without discrimination.

The open society does not mean limitless immigration. Quantitative and qualitative limits are perfectly compatible with the concept of the open society as we understand them.

Without first principles such as international cooperation, the rule of law and the open society, it will not be possible to bring about fundamental immigration reform. Our efforts and yours will be picked at by special interest groups. In a letter sent to me by President Gerald Ford, who is joining me and many distinguished citizens today in forming a Citizens Committee for Immigration Reform, he praised the work of the Select Commission, but he warned that we must guard against the parochialism and the demagoguery of so many special interest groups.

We cannot defang, to use Senator Al Simpson's phrase, the emotionalism which surrounds this issue, not entirely. But we can recognize first principles and try our best to be guided by them. If these basic principles do not overcome the four horsemen of parochialism, xenophobic demagoguery, knee jerkism and perfectionism, at least perhaps they will temper the debate and provide the necessary framework for getting on with the work in the end.

Each of the major recommendations I will discuss this afternoon are interrelated, and I urge the Congress to take a comprehensive organic approach to a solution. For example, concentration on enforcement should be matched with an equal emphasis on a sound immigration law.

Of course the first subject on the minds of most persons who worry about immigration today is illegal immigration. This Commission not only recommended a more rational system for admitting immigrants legally and for the legalization as resident aliens of a large proportion of undocumented aliens now in the United

States, but it firmly recommended many measures to enforce consistently, firmly and fairly the limits established by the law.

There is no sense in pretending enforcement will work without demagnetizing that force which brings illegal aliens here, namely, economic opportunity, jobs. A centerpiece of the enforcement measures recommended by the Commission would be an employer sanctions law with a simple, reliable, nondiscriminatory method of certifying employee eligibility that all of us would use when applying for a new job.

Would such a measure be worth the effort and cost and would it work? Thirteen members of the Commission believe that it would. Would such a measure discriminate against certain groups or be used to violate the privacy rights of Americans? While I understand the apprehensions of the many people who raise these questions, these issues are of concern to me also, and I do strongly believe that the answer to this question is no.

Employer sanctions is not a panacea, but it will take away the incentive for employers to hire illegal aliens and to demagnetize the magnet enough so that with comprehensive, target enforcement strategies we should be able to reduce the illegal migration to a relatively small number.

This Commission does not want draconian measures at the borders, ports of entry, or in the interior. Just the opposite. We made many recommendations to improve the professionalism of the Immigration and Naturalization Service and to protect the rights of those who come in contact with its investigators, inspectors, and border patrol agents. But we know that without employer sanctions, enforcement efforts will not be effective.

I would ask that those who sympathize with the aspirations and the plight of illegal aliens, and I count myself among those who worry this way, I would ask them to think about the aspirations of Americans who wages and standards are depressed by their presence, and also to think about those aliens themselves, not the ones who slip into the system and make a decent living while they adjust to a fugitive life in the shadows, but also the ones who are victimized by unscrupulous employers, those who die in the desert, or in the ballast tanks of ships, and the ones who are waiting patiently in line for so many years to come to the United States through the normal legal immigration channels.

For those who are apprehensive about discrimination resulting from the application of employer sanctions, I would point out that the only system that the Commission recommended would protect against discrimination more than at present because all persons eligible to work would have to identify themselves through a reliable method of identification. Employers who turn someone away would not have the excuse that he or she looked or talked like an illegal alien. Under the employer sanctions law proposed, employers would not be penalized if they happen to be fooled by the job applicant.

I am also persuaded that concerns about the abuse of privacy are not warranted. What protects our society and individuals in it against the abuse of privacy is the existence of traditions, habits, and laws which sustain our 1st, 5th, and 14th amendment rights concerning freedom and due process. These constitute a national will to resist governmental control or private misuse of personal information.

In fact, the employer eligibility system should be the occasion to make explicit in legislative language the privacy protections due individuals in our society. In this case there would be strict limitations on the use of the employer eligibility card and on the access to and use of the data base behind it.

Effective enforcement would depend on one other major Commission recommendation, which was also guided by the principle of the rule of law. We call it legalization. We unanimously recommended the legalization of a large proportion of the undocumented aliens now present in this country. We specified that persons should be eligible if they could show that they were here in the United States no later than January 1, 1980. That is the date when we first, as a Commission, began to talk about the possibility of legalization, and we did not wish that conversation to be an additional magnet. I know that the Congress will pay particular attention to the reasons which produced this unanimous vote.

First, new enforcement efforts to curtail the future flow of illegal aliens, which the Commission said must be instituted if we are to have a legalization program, will depend for maximum effectiveness on the knowledge which can be produced only through a comprehensive legalization program that provides information about migration channels, smuggler practices, and the characteristics of the aliens themselves.

Second, through the legalization we will learn for the first time the composition by national origin of illegal aliens and even be able to pinpoint the villages, towns, States, and provinces from which they come. That knowledge will be invaluable when we try to deal with migration pressures at the source through bilateral or international cooperation.

Third, by legalizing this group, the Immigration and Naturalization Service will be able to target its limited enforcement resources where they count, in stopping future flows, instead of the costly and ineffective cops-and-robber approach to catching people who have already learned how to avoid the authorities.

Fourth, these persons, while more capable of evasion than newcomers, live in an underclass outside of the protection of the law. As such, they are prey to exploitation by employers who violate labor protection laws and other more serious criminal activity, undermining the rule of law for all of us, as well as depressing the wages and standards of some laborers.

Fifth, legalization not only recognizes the fact that these people are already here, but that we will all benefit if they come out of the shadows and participate more fully in American life.

Ironically, legalization may permit many aliens to return home more frequently to their countries of origin than they now can do. Rates of emigration or outmigration for most immigrants have been about 30 percent of immigration. For this group that would be higher once given a legal resident alien status in the United States, since they no longer would be subject to the hazards of crossing illegally when they return.

No one has to fear that legalization will cost the United States anything. Fees will pay for the entire program. Only those aliens who have a job and who can meet the public charge requirements will qualify.

Some are asking why it is necessary to confer the status of resident alien on those who qualify for legalization. Why not, they ask, give them a temporary worker status and include them as part of a large scale guest worker program to be negotiated with interested countries?

The idea of a large temporary worker program is tremendously attractive. Perhaps a better word, though, would be "seductive." Economists predict a large shortfall of U.S. service and agricultural workers in the decades ahead. There are certainly hundreds of thousands of people in the Caribbean basin and in Latin American countries who would be happy to take those jobs as they become available.

Some people believe that a large guest worker program might channel enough persons into the employ of ranchers, growers, garment and other manufacturers to such an extent that employer sanctions and other enforcement measures would not be necessary.

There is a superficial plausibility to this argument and the Commission gave it serious consideration for more than a year and a half. I can recall being very much entranced by it when I first joined the Commission. In the end, we were persuaded, after much study, that it would be a mistake to launch such a program.

First, a large scale temporary worker program, say half a million or more a year, whether or not it included the newly legalized aliens already here, would have some limits which would have to be enforced. It wouldn't be a completely open program. Would the program be for single men only or agricultural employment only? For the Southwestern States only? For 6 months, or 8 months, or more in duration? Would individuals be able to renew their participation in this program?

Whatever the answers to these questions, the limits would have to be enforced. Without an employer sanction law and a reliable means of employee identification, the rule of law would be compromised extensively as aliens tried to slip the boundaries imposed by this program.

The European experience is telling in this regard in that a very large proportion of guest workers became permanent guests.

Second, it is difficult to turn off such a program once it gets started. A large scale program would build a dependency on foreign labor in certain sectors of the economy. Certain jobs would become identified with foreigners, putting at risk one aspect of the principle of the open society, as I tried to define it a moment ago. In effect, a second class of aliens would have been established in our country who are not fully protected by the law and its entitlements and who could not participate effectively in mainstream institutions. And a large program without effective enforcement measures would stimulate new migration pressures in the long run, and again we have the specter of law disrespected, as it is now.

Third, one of the seductive reasons for such a program is to accommodate the population pressures of other nations and thus achieve foreign policy objectives. But there are few things more dangerous to friendship between nations than to have a large body of foreign nationals working in one country with a possibility of incidents being blown up by a demagogue in either country.

Many have suggested that a guest worker program would be helpful to Mexico. Apart from the fact that no Mexican official represented that position to us in our conversations with them, we did not think it wise to propose a program with potentially harmful consequences to the United States as a whole.

The Commission has been mindful of U.S. relations with Mexico and other countries as charged by Public Law 95-412. We know that it is in our national interest that Mexico be able to shape its own destiny as a prosperous and stable democracy. We know that Mexico to some extent relies on the safety valve of my migration to the United States, but we cannot shape an immigration policy for the world with 16 million refugees and with a worldwide backlog of more than 1 million persons registered with visa numbers to come to the United States, in response to one nation only. In fact, that would be inconsistent with the principle of the open society, which does not discriminate in the admission of immigrants and refugees on the basis of nationality or point of origin.

However, Mexico is in many ways special, and we did make several recommendations consistent with that very principle, which will have the practical effect of increasing immigration from Mexico to some extent. We estimate at the outside about 700,000 of the 1½ million persons who might avail themselves of the legalization process would be Mexican nationals, who would then be in a position to petition for their spouses and minor children to come to the United States. It is conceivable that as many as 250,000 Mexican spouses and/or minor children would be admitted, although the actual number is likely to be less.

Such persons would, of course, have to wait in turn under the numerically restricted immigration totals imposed by the new law, but their admission to the United States, and that of other spouses and minor children of resident aliens, would be expedited by the emphasis which the Commission has placed on the reunification of immediate families. The modest increase recommended for legal immigration, which would facilitate both family reunification and independent immigration, is another recommendation which is likely at least in the near term, to increase immigration from Mexico slightly.

Finally, the clearing of backlogs in conjunction with the introduction of the new system would also help Mexicans to some degree.

I know there are persons who are wondering why the Commission recommended an increase in legal immigration. The answer is straightforward but not simple. It is clearly in the interest of the United States to do so. Once again I will summarize our finding with respect to legal immigrants.

Immigrants work hard, save and invest, and create more jobs than they take. Thus, they contribute to economic growth in the United States. It is true even for refugees, although the contribution takes place after a longer period of adjustment.

Immigrants rapidly pay back into the public coffers more than they take out when they arrive.

Immigrants strengthen our pool of younger and middle-aged workers, thus strengthening our social security system and enlarging the U.S. manpower capabilities.

Immigrants strengthen our ties with other nations.

Immigrants strengthen our linguistic and cultural resources.

Immigrants and their children embrace American ideals and public values rapidly and help to renew them.

Immigrants give a brilliant demonstration to the world of the advantages of a free society.

And finally, the children of immigrants, according to our studies, acculturate well to the American life and actually seem to be healthier and do better in school on the average than those of native-born Americans.

In the face of all this, one might ask why the Commission was so timid in recommending a modest increase in legal immigration from 270,000 to 350,000 annually. One reason is that under the Refugee Act of 1980, whose fundamental principles we endorse, it is possible to admit more than the 50,000 refugees anticipated by that act as the normal annual flow. As you will recall, when that act was written they took an average of the immigrants coming annually over a past number of years.

Because refugee situations are often emergencies, we need to provide flexibility to meet them. Therefore, we must be cautious on the number of numerically restricted immigrants we admit.

A second reason is that some of our Commissioners believe that we should not increase the present ceilings at all until effective enforcement is in place, particularly against illegal immigration. In fact, four Commissioners voted against the increase in immigration levels for that very reason. The 12 who voted for it include many who are strong advocates of new, effective enforcement measures, but see the value of increasing immigration modestly at this time for the good that it will do to this country, and because the new system will help reduce pressures for illegal migration, even if slightly.

If the flow of illegal immigration is substantially stemmed by employer sanctions, the total number of new entries to the United States would also decrease substantially, even with a slight increase in legal entrees.

A third reason is that the largely incorrect but widely held perception that immigrants take away from rather than benefit our society is false. Because that perception is a social reality, though, one must be cautious about numbers.

What will the numbers add up to if the Commission's recommendations are followed? If the committee adopts the recommendations of the Select Commission, we can make population projections based on reasonable assumptions, including one about illegal immigration, which you will find discussed in two chapters of the staff report here on my left.

The result is that the United States will achieve negative population growth at a level of 274 million persons by the year 2050, less than 70 years from now. That is based on a projection of an annual net immigration of 500,000, a reasonable and I believe perhaps conservative projection, as also explained in the staff report, which I hope the Congress will reprint since it goes into such detail with respect to the background and the implications of the Commission's recommendations in our final report; 274 million does not strike me as high by any measure for the year 2050. The United States, if it followed those recommendations, would go from having 6 percent of the world's population now to far less than 3 percent by the year 2050, something that may happen in only 25 years. The United States would remain the least densely populated Nation in the world, with the probable exceptions of Canada and Australia, and our per capita wealth relative to the rest of the world would be much greater than it is right now.

There is also concern about increasing the percentage of foreign born in our Nation's population. Right now there are eight Western countries with a higher percentage of foreign born than the United States and we are better at absorbing immigrants than any of those nations. Yet, the concern is understandable. Immigration means change, and change brings about the possibilities of conflict.

Let us take the worst case from the point of view of those who are concerned about the rise in the percentage of foreign born. Suppose Congress does not accept the Commission's recommendations, which we believe would lead to a net annual migration of no more than 500,000 a year, a number that is certainly less than those net arrivals in the past few years.

Suppose the net migration were higher, let us say 750,000 a year. That would lead to a population of 300 million by the year 2080, 100 years from now, the equivalent of five generations. And of that population, one-third would consist of persons who had arrived in the United States after 1979, or of their descendents.

Why should we be so worrisome, in light of U.S. history? The fact is that about 45 percent of the people now in this country either arrived here from afar or are descendents of people who came here within the last four or five generations. In fact, at least one-half of the congressional members of our Commission are descendents of persons who came to the United States within the last four generations, not even counting that distinguished alumnus of Notre Dame, Ron Mazzoli.

No one questions their Americanism in the slightest, even though many people vigorously opposed the arrival of their ancestors, their grandparents, and great-grandparents, predicting dire consequences for the United States because of their admission.

In years past it was argued that German immigrants, for example, because of their strong love for the German language and culture, would destroy the ties that bind us together as a nation, even our English language. Then it was the Catholics that people were worried about, particularly the Irish, of whom one was my mother, with their devotion to papal authority, who, it was maintained, would prove incapable of contributing to a free society. One of them wound up as President of the United States.

Next Jews, Italians, Poles, Greeks, and others were scorned as unfit to be good Americans. In fact, the last commission which preceded ours, that under the appointment of President Theodore Roosevelt, was based on the proposition that there were inferior and superior people in the world and that we ought to keep all the inferior people out, and that, as you know, was done in early law in this country.

So strong was the feeling against Asians that they virtually were excluded as legal immigrants until very recently in our history. A few of them have recently won Nobel Prizes for America.

Only the American Indians can claim to be charter members here, but all of our ancestral groups in their own way can claim to have refreshed, renewed, defended and created the United States of America, and many of them and their children have given their lives in America's wars.

We are all fortunate that some of our ancestors were immigrants, others refugees, some contract laborers, others indentured servants, and still others survived the slave trade and made it to this land. Most of them suffered the migration passage and the problems of adjustment here, even those who chose to come, but few of us regret that they stuck it out. If they had not, none of us in this room would be here today.

While this Nation should get its house in order by regaining control over immigration policy, and while it is clear that we can no longer follow George Washington's advice to open all our doors to all of the oppressed of the world, this would be a horrible time to impose additional quantitative restrictions on immigration. It would be a classic example of biting off one's nose to spite one's face. It would be a betrayal of what is the best in us, what the country stands for above all else—opportunity, freedom, and respect for diversity, based on the dignity and the worth of human beings.

In 1939, the Congress followed the public opinion polls and refused to accept refugees beyond the number allocated under our restrictive national origins quota system. Not only did that doom those persons rejected to a fate determined by Mr. Adolf Hitler, but the United States lost the talent, the ability, and the gratitude of those people and their descendents.

We can and we should assert our own values, and traditions, and our national self-interest by modestly increasing levels of immigration and my instituting a legalization program as well and by enforcing the law firmly and fairly. What is required is a campaign of leadership to articulate those values, those traditions, and those interests in relationship to immigration so that the American people will support the recommendations of the Commission.

Thank you very much. It has been a privilege to be with you all and to serve on this Commission.

Senator SIMPSON. Thank you so much, Father Ted. We have a rollcall vote, so we must leave very quickly. Senator Thurmond has a statement to be entered in the record. I acknowledge the chairman of the committee.

Senator THURMOND. Mr. Chairman, since there is a rollcall vote and we will have to leave, I ask unanimous consent that my statement be placed in the record following that of the chairman.

Senator SIMPSON. Without objection. The hearing will proceed with Chairman Mazzoli in charge. Thank you so much.

Representative MAZZOLI. Thank you very much.

Father, thank you very much for your statement. Because we have a limited amount of time, we would limit our initial round of questions to 5 minutes.

First, Father, I was interested in your recounting of these four horsemen: parochialism and then xenophobic demogoguery. Was he the fullback or was he the halfback? [Laughter.]

I am sure that he's one that Coach Faust could use. With a name like that he would be a tough one.

Father, let me ask just a couple of questions. One deals with one of the big issues which the Commission report has raised, and that is employer sanctions. The fact that the Commission did not decide the question of what kind of counterfeit proof or secure system of identification should be used leaves some Members of Congress, at least those who have talked to me, with a somewhat incomplete feeling.

You have taken what I consider to be an interesting stand, and I wonder if you might elaborate, Father, a bit on the system that you might envision, the questions which have been raised about it, and a kind of a timetable, if you have one, that would be useful to this committee.

Reverend HESBURGH. I would think that a very simple approach to this, which I must say many people would disagree with, would be to take a card that everybody is carrying right now, the social security card, and upgrade it and make it counterfeit proof, which would not be too difficult. One could even ask that people pay for a counterfeit proof card because they use it so much. They don't have to use it except on certain occasions, but very few people get a job today without giving their social security number and showing that it is their true number by presenting the card.

I believe that of all the different systems I have heard, and believe me, we have heard hundreds of different systems, this would be a fairly simple thing to do. One could say, for example, that in addition to nine other very important usages of the social security card today, and you can find these on page 358 of our report in the special substatement of Senator Kennedy, that 70 percent of the States use the social security number for driver's licensing purposes. Several States use it as one of the identifiers or authenticators in a cooperative data-sharing network worked out with the FBI. The National Drivers Registry of the U.S. Department of Transportation uses the social security number. Florida and Utah use the number for statewide educational recordkeeping of high school students. It is also used in many instances for vendor identification for fishing and hunting licenses.

Many students, including those at our universities, are asked to give their social security when they apply to college board examination, so that they can't be taken by someone else, or even when they apply to the university, for identification. Many other colleges use this for their normal recordkeeping.

Credit bureaus use this for their data banks as identifier or authenticator. And many employers, including the U.S. Senate, use the social security number for employer recordkeeping and identification.

In addition, Senator Kennedy asked the GAO to ask what else it is used for, and he was told that it was used to attend a meeting or a social function at the White House. When you give your number there they are not about to give you food stamps. They are just talking about whether you are going to get in or not. To join the chamber of commerce or the Jaycees, to take out an insurance policy, to file an insurance claim, to obtain benefits from an estate or trust, to obtain a home mortgage or loan, to check into a hospital, to purchase or obtain title to an automobile, to register to vote, to install a telephone, to argue a case before the Supreme Court, to contribute to charitable organizations through payroll deduction, to register a motor vehicle, to obtain a library card or, last but not least, to give blood.

Now if this card is used this much by millions of people in and out every day, and because it could be counterfeited by any high school student in the land that knows anything about printing, it would seem to me that it might be worthwhile to have it more authentic, so that people aren't using someone else's card or someone else's number, and it would avoid a lot of difficulties throughout the land.

I would personally like to see that done with it written into the law that it cannot be used for, how shall I put it, purposes of police identification.

Representative MAZZOLI. As a national ID, because that is the argument.

Reverend HESBURGH. That is what turns people off, and I think that could be written into the law and made to stick. It is used that way right now, I might add.

Representative MAZZOLI. Father, would you envision a situation in which when I went to a prospective employer, that individual or some delegate—for instance the personnel manager—would fill out all of the forms about my qualities and talents and so forth, and then say, "Let me see your ID card or let me see your social security card."?

Reverend HESBURGH. I would think it would be the simplest kind of identification, and we would all have to use it. I would have to use it and you would have to use it.

Representative MAZZOLI. Would you suggest a picture on the card?

Reverend HESBURGH. There are all sorts of things. You can put a special magnetic tape imprint that goes with that number. You can put some kind of a picture or other thing. I have at least three ID cards in my pocket right now with my picture on them, one being for the State Department when I was serving as ambassador, another one being for my driver's license and a third one being to get into the Chase Manhattan Bank where I used to serve on the board.

Now I think that to have something simple that is useful in many other contexts would be good.

I think the problem is when someone comes in who is foreign-looking or has an accent in English and people are afraid they might be illegal and people turn them down, they couldn't do this if you have a card. If you have a card, you are in.

I have had the experience of many Mexican Americans who have been badly hassled at the border and they're American citizens. They are born here. But because they look foreign or some such thing, whatever that is, they get hassled when they go home to see their relatives and try to come back to the United States. And I think to have something, you can just say, "Off my back."

Representative **Mazzoli**. Well, my time has expired, but it seems clear to me that if you have sanctions against an employer, there has to be some ability on the part of the employer to determine who is, in fact, legal.

Reverend **Hesburgh**. It would be an imposition to lay this on an employer and not give him an easy means of doing it. It ought to be done as simply as you get gas at the gas station.

Representative **Mazzoli**. Thank you. My time has expired. The gentleman from New York, Mr. Fish, is recognized for 5 minutes.

Representative **Fish**. Thank you very much, Mr. Chairman, and thank you, Father Ted, for that very fine statement. It illuminates so many of the issues that we faced.

In your testimony when you stated that Congress adopts the recommendations, and we are talking numbers now, of a net immigration of 500,000, that the population of the country will level off at 274 million by the year 2050, I assume there that you are contemplating 50,000 refugees per year?

Reverend **Hesburgh**. Yes; we actually doubled it to make it more conservative. We put in 100,000.

Representative **Fish**. 100,000 refugees per year.

Reverend **Hesburgh**. If you take the average of the last 15 years, the average is 50,000, but because of the last 2 years being fairly large because of the Cuban situation, the boat people, et cetera, we doubled the number that are in there.

Representative **Fish**. What fertility rate was used to measure that?

Reverend **Hesburgh**. 1.8, which is the current one in the United States, which is not reproducing. We are at zero population growth right now for the purpose of that figure.

Representative **Fish**. Did any Commission studies reveal that perhaps with a change in the population of the country, that that fertility rate may rise and change——

Reverend **Hesburgh**. Actually, it tends to level off with the national rate and I think it is probably a function of hope. People somehow have better opportunity and they get more education. They also have better employment, perhaps, and more prosperity, and that number tends to level off. It may take a generation or so to do so, but all our studies would indicate that before long it is the same as the national average.

Representative **Fish**. In your discussion of numbers, I didn't hear you talk about the additional 100,000 per year over a period of 5 years to clean up the backlog, which I think has relevance to your discussion of Mexico as a special case because it is my understanding that if the Congress did go for the extra 100,000 a year for 5 years over the 350,000, that Mexico would be one of the principal beneficiaries of that legislation.

Reverend **Hesburgh**. There is no question about that.

Representative **Fish**. The considerable part of your testimony was dealing with a temporary worker program, and being in opposition to it. I wonder, if we are not going to have a temporary worker program, what the Commission's view was of the continued pressures on our border, particularly from Mexico and the Caribbean Basin, what we would put in its place to accommodate the pressures to come to this country?

Reverend HESBURGH. I think I could oversimplify by saying we tried to close the back door as much as possible and to open the front door a little more. I realize we will never open it up to the extent we have an open border. I don't think we can. But I think with the enlarging somewhat of 270,000 to 350,000 as a total figure, stressing family reunification, and we have about 15 million Hispanics in the country now and many of them would benefit by family reunification; by stressing legalization, and that number would also benefit by family reunification, I think we would have a much better situation than we have right now, and certainly more legal.

I would have to say, though, that we probably would never get to the figure that we wanted because Mexico has a very high birth rate and they have a demand for 600,000 new jobs a year, and it is unlikely that that demand will be filled.

I would say that looking up the line, we have set up a system that could work with fewer or more people. And as you know in our discussions, I think there ought to be a flexibility built into this system whereby every other year, in view of the socioeconomic situation in the United States as regards unemployment, as regards the gross national product, as regards labor demands, we ought to be able to make differences in the numbers entering, and that it shouldn't be carved in stone for all time.

We also allowed in our report that the H-2 program, which is a temporary worker program, be continued or modestly enlarged.

But I think I would have to honestly say, and you were privy to all these conversations, that after much looking at the program, and having some fine testimony, including some from Senator Hayakawa, and hearing a good deal about this in our public hearing in Phoenix, Ariz., that we finally came down to the thought that we couldn't really bring it under control with a large temporary worker program, I guess the main reason being that from the German and the French experience with the guest workers, that they tend to stay. Then you have a problem of what are you going to do about repatriating.

In two times in our history, we have driven 1 million Mexican workers back across the border, after the bracero program and I believe in another period in our history, and I think both of those occasions were rife with all kinds of abuse of human rights and even simple humanity. And I would think a large guest worker program might get us in that box again because times do change. We have good times and bad times and it is not fair to ask people for help in good times and then suddenly push them across the border in bad times.

Representative FISH. Well, the flexibility you mentioned would work both ways? A review every 2 years in which the numbers could go up as well as down, depending on demographic factors, economic factors?

Reverend HESBURGH. I think somehow in your discussions, Chairman Mazzoli, I hope that you look at the possibility of flexibility. I thought of a high-level group or committee or commission or whatever you want to call them here in this town who are in contact with the geopolitical realities from the State Department, the labor realities from the Labor Department, the legal realities from the

Attorney General, and top flight representatives from those areas, perhaps as well as Health and Human Services, that that group could look at some trigger factors every year, being mostly, I think, unemployment, state of prosperity, labor demand in certain sectors of the economy, especially in the Southwest, which is growing so fast, and to say we will be sensitive to these and we will recommend movements up or down, depending on the socioeconomic conditions in the United States.

That, I think, would make a lot more sense than saying this number for all time.

Representative MAZZOLI. The gentleman's time has expired. The gentleman from Texas, Mr. Hall, is recognized for 5 minutes.

Representative HALL. You stated at page 4 of your testimony that "As a Nation we cannot survive without international cooperation," which of course I agree with. When you discuss the guest worker program on pages 13 and 14 of your testimony, you stated that:

> Many have suggested that a guest worker program would be helpful to Mexico. Apart from the fact that no Mexican official recommended that position to us, we did not think it wise to propose a program with potentially harmful consequences to the United States as a whole.

Were any Mexican officials asked for any input during that time this Commission was in operation?

Reverend HESBURGH. They have some independent research of their own going on and we consulted with them regarding what they were doing, what we were doing.

I would like to ask our Director Larry Fuchs, since he was the one directly involved, to answer that.

Mr. FUCHS. We met on several occasions with representatives of the Ministry of Labor and of the Department of Foreign Affairs, on one occasion with the head of the North American Section of the Department of Foreign Affairs, and on at least three or four occasions with a representative from the Ministry of Labor, who had a special informal responsibility for consulting with the select commission. And our exchanges were on an informal basis, and we have been, in addition to that, in constant contact with Mr. Barona Lapata, who is in this room today, in an informal way, since he has followed our hearings, and we have tried to be sensitive to and aware of the positions of the Mexican Government with respect to immigration.

Representative HALL. Did the Mexican officials you were in discussion with ever say that they would be opposed to a guest worker program?

Mr. FUCHS. Yes, Mr. Hall.

Representative HALL. What reason did they give?

Mr. FUCHS. I think, Mr. Hall, that the reasons were not advanced. It was simply categorical that they would not be interested, and it may be that the reason that they say that is that they would prefer to have the United States propose it and to see what it is, rather than to have them, through this informal channel at this level, introduce the idea as a bilateral idea.

So I do not take the statement: "No, we are not interested in a guest worker program" to be a final statement. I do not take that to be the considered, full statement of foreign policy or immigration policy on the part of the Mexican Government. It is the statement that was made to the select commission through me.

Representative HALL. Did your Commission develop any testimony that indicated that the undocumented alien was taking away jobs of American citizens?

Reverend HESBURGH. We had a very difficult time with that, Mr. Hall, because we actually brought it up at almost every one of our public hearings, and we always heard two sides to the question. I have said often it brought me back to the early days of the Civil Rights Commission where we would go into a community and one group would say there is terrible discrimination here and the other group would say there is no discrimination here.

What we heard was first, minority groups saying yes, they are taking our jobs. Then we would ask the employers and they would say we advertise for jobs and five showed up and they left at noon and we couldn't get our crop in.

We had a man in the San Francisco hearing, I recall, who said: "I am never again going to plant a crop that can't be harvested mechanically because if I can't get undocumented workers, I can't get the crop in because I can't interest other people into coming out and doing stoop labor in 115 degrees heat," which is understandable, I guess.

But in any event, I would have to say that my own perception, having been at many of those hearings, and having read the special staff studies that were prepared, is that we could not simply believe a yes or no answer to that question. There were people who said they were taking away jobs and there were people who said they were doing jobs that nobody else wanted. You can get good opinions on both sides and I'm sure you can get statistics, and there is a good deal of research on it.

Larry, do you want to add anything to that?

Mr. FUCHS. I don't think there is any question, Congressman Hall, that in some localities, in some sectors of the economy, there is displacement of U.S. workers. And that is on the basis of a great deal of research.

I also believe personally that the extent of the displacement is often exaggerted by persons who, for whatever reason, want to make that point. It depends very much as to whether you are talking about the secondary labor market or situations in light manufacturing in, let's say, Chicago, where there would be one clear example where the INS cleared out a group of aliens after a raid and those jobs were filled within a few days by persons in the city of Chicago.

I think the important thing in this subject to consider is that you've got people from all over the world. Only about 50 percent of the illegal aliens in this country are Mexican nationals, and that you have a great many undocumented, illegal aliens not in the secondary labor market but they have moved on into other jobs that pay above the minimum wage, and they are still in that underclass where they are easily preyed upon and exploited by employers and, therefore, depress wages and standards, and not just displace workers.

Representative HALL. I know my time is very limited, but do you think that it would be advantageous at this stage, before any action is taken by the Congress, for officials of the Congress or your committee to go back and have discussions with the Mexican officials with reference to a guest worker program?

Reverend Hesburgh. I don't think anything can be lost by having such discussions. In fact I would hope that there would be such discussions. But looking at all of the ramifications of what that means, our problem was that we thought one could easily install one, and there would obviously be takers if one installed such a program.

The problem is how do you control the limitations on the program? It is almost impossible with the kind of ports we have now to do that, and I think we would simply be reproducing what we have now, which is illegal immigration. One would come on the program, get a job, get lost somewhere and not go home, and then we would be right back where we started. That was our perception after looking at it.

I must say, I started out sympathetic to the idea of a guest worker program.

Representative HALL. Thank you.

Senator SIMPSON. Thank you, Congressman Hall.

I really regret the hurried way we scurried out of here. I wanted to wait until the end of your testimony, and it was excellent and will be entered into the record.

Let me ask your opinion on the areas of immigration and refugee policy which in your mind the Commission did not address in sufficient detail, and which might be useful for the Congress to examine.

Reverend HESBURGH. Let me just tick them off, Senator. Obviously we didn't completely bite the bullet on what kind of easy, noncounterfeitable identification. I am willing to do that personally and I did it I think in your absence. I said an upgraded social security card because we all have one anyway and need it on many, many occasions, would be the simplest kind of identification, although I would like to see, if it is upgraded, that there are certain restrictions put on its use for police identification.

Second, I don't think we have really solved the problem of what we do with mass immigration that is unforeseen and just happens, such as the Cuban incident of last year. I don't think that we really have yet solved that problem, and as you recall we got around it by doing what the Congress did when they established the Commission. They didn't quite know the answer so they set up a commission and we in a sense suggested a quasi subcommission that would really look at this program, pull in people involved through the Immigration Service, through the local community, through the Labor Department and others, and try to come up with some kind of scenario, what would happen if. And my guess is that that is the most difficult problem of all.

You have heard me say many times that I believe that the whole problem of migration of people will be one of the great spectres of the future, that I can easily foresee not just a few hundred thousand people arriving at our shores but hundreds of millions of people from the poor parts of the world such as India, marching on Europe, if they have three or four bad harvests and they are actually starving to death by the millions. I could see that same kind of incident happening here by land and by sea if we came to that kind of impasse.

The only answer I see in the long, long run for that question is to have economic development in those parts of the world which are such disaster areas that without economic development people are just going to leave and try to go to another country.

Senator SIMPSON. Let's go now to this issue of legalization or amnesty. Some persons see a legalization program as a reward for those who violated our laws and circumvented the system. Could you, for the record, assist in explaining the rationale for including the one-time legalization program as an integral part of the package? I guess that comes from my own recollection that when this was first presented many Commissioners had reservations. Then after only one afternoon of deliberation, it was unanimously accepted.

Reverend HESBURGH. That's right.

Senator SIMPSON. Would you share that process, please?

Reverend HESBURGH. I think, first of all, look at the alternatives. The people are here. We are not adding to the population of the United States. They are here, and I suspect many of them were counted in the last census.

Many of them are not just here. They are working. They are establishing families. Their children that are born are U.S. citizens. And they live in the shadow world. I have had many of them call me up on the phone or write me letters and just say I've been here 10, 15 years, what do I do?

The alternative is to try to round them all up. First, I don't know how you would ever find them. Second, rounding them all up would be enormously expensive, if not impossible. And on top of that, it seems to me not a very good thing to do at this stage.

So my guess is, I think in terms of a tripod, as you know, Senator. I think of legalization following upon employer sanction and easy identification. I think that will clean up the nub of the illegality which is festering in this area today.

Senator SIMPSON. I think it is important to share with the public the means which the Select Commission used to assess American citizens' public opinion during the course of its work, and how that was deeply considered as we arrived at our decisions.

Could you briefly explain that?

Reverend HESBURGH. Yes; I think the first indication of that, of course, is the title of our report, which is "U.S. Immigration Policy and the National Interest." I think you, sir, were always insistent that this was a sovereign country and that we had to establish our own laws, that every other country on Earth did, and we did a rather poor part of it.

I think through the public hearings especially, where we not only scheduled people throughout the day who could give us the best information, but at night had an open microphone for 3 or 4 hours where anyone could come and speak to us about their concern, plus an enormous correspondence, some of which came to the Commission and some of which I'm sure you and I and others on the Commission received personally.

I would say we have been largely responsive to the public interest and to the public concerns.

Senator SIMPSON. Just one final question, and then I will submit some further questions in writing and would appreciate your response.

You spoke briefly on the issue of refugees. One of the problems is that in the new law we established a normal flow of 50,000 and then we went to 218,000 the very first year. This could present serious problems. What are the numbers? What is your thinking with regard to the numbers the United States can accept for resettlement in a refugee policy for the future?

Reverend HESBURGH. Let me say just for purpose of background that we have figures going back to 1960 here, and in those years the numbers were about 12,000 and 13,000 the next year. Then we had a period during 1967 to 1970, a 4-year period when the numbers were in the 50,000 range. Then we dropped back to 20,000 again in 1973 and 1974 and up to 50,000 again. In 1976, because of special circumstances, we had 103,000 and the next year we were down to 14,000 again.

The average for all those years came out to about 50,000. My guess is one would have to double it, given all the problems in the world today. In our figures that we gave you for the long-range projections, we raised that figure to 100,000 in the calculation.

Senator SIMPSON. Thank you. My time has expired and let me recognize Congressman Dan Lungren of California, whom I came to know early in my time here. He is a a new Member of the House subcommittee who has already been a very important participant in these proceedings and this issue.

Representative LUNGREN. Thank you, Mr. Chairman, and it is good to see you again, Father. I applaud the commitment to this cause that you have exhibited, and in particular your call to action. As a member who represents a district that is heavily impacted, I found out even more when I went home how heavily impacted. The lastest Census Bureau statistics of my hometown of Long Beach showed that 4.5 percent of the total population of my hometown is now Southeast Asian refugees. We have 2,000 students in our local school district from Southeast Asia. In addition we are very heavily impacted by both legal and illegal migration from other parts of the world.

So I am extremely pleased that this Commission has at least brought us to a position of attempting to focus attention on this matter. I must say it is the first time I have been accused of seduction with regard to the subject of guest workers, and I think it's probably the first time anyone has ever suggested that you were a seductee.

Actually I am kind of flattered by it because the Commission gave it short shrift in the report, and I noticed about a third of your statement involved the guest worker concept so I would like to talk about it, if you don't mind.

I operate from the premise that we have had tremendous labor migration from Mexico to the United States since at least 1880. At least all the historical data seems to suggest that. And now the Commission seems to suggest that if we have employer sanctions and legalization of those that are here, at least since that date you gave, that this will take away the magnet that draws these people to our borders.

And I just wonder what the rationalization for that is in view of a 2,000-mile common border, and I agree we ought to upgrade and increase border patrol and so forth, but I think it is unrealistic to believe we can ever totally close that off. And given the fact of the population density of Mexico, the increase in young people there, where half the people are 15 years of age or less, are we truly going to be able to effectively cut this off or are we in fact going to have a legalization program, a slightly expanded H-2 program, and then continued illegal immigration to this country, predominately from Mexico?

Reverend HESBURGH. I think it is an open question, Congressman, but our best calculation was that if people came and made 25 attempts to get a job and were told where is your card and they didn't have one, they would likely go home. No one is going to stay here just because the climate is nice. And we also assume that if we cut off 75 percent of illegal migration, that would be perhaps an optimum figure. There will always be an area of illegal migration that we probably won't touch because there will be small employers who will get housemaids and not say anything about it, or stoop labor and small concerns or gardening and that kind of thing. I don't believe one can completely control every port in America.

But I would like to make one point that I think is important here. There is no way on Earth you could collect income taxes in America if the employer didn't cooperate with withholding. It doesn't cost the Government anything. And it is fairly effective because once something gets in place and is accepted, like having a driver's license for example, it becomes the thing one does, even though like myself, there are many people who have never been asked in their whole life for a driver's license.

Representative LUNGREN. Well, I guess my question is—is it an assumption underlying the recommendations of the Commission that those who are here illegally and would be legalized under your system would therefore fill these jobs that are now filled by those who are here illegally?

Reverend HESBURGH. No. I don't think one can make that assumption.

Representative LUNGREN. Well, who would fill those jobs?

Reverend HESBURGH. I think some of them would go down the drain, frankly. For example, there are sweatshops in the garment industry that are working people overtime without pay. They are paying them substandard wages. They are working them under bad conditions.

Representative LUNGREN. They would go down the tubes with the guest worker program, too.

Reverend HESBURGH. And I don't think I would mourn that because it is a terrible way to treat human beings. We got rid of that in child labor; we got rid of it in many aspects of the garment trade in New York, but it still does exist in many places. I don't have much sympathy for that kind of treatment of human beings.

Representative LUNGREN. One of the difficulties I have is that for such a long period of time we have ignored this problem and said things that just aren't true. Growing up in Southern California, it is a reality. If you go to a restaurant, or to many different industries, you notice that many of the people are here illegally. We know about it. People wink at it. We know it is a fact and it has been a fact of life for some period of time.

Yet you have some studies, such as the one done by Dr. Wayne Cornelius down in San Diego which suggests that 85 percent of these individuals from Mexico come up here for no longer than 5½ months at any one period of time, and have a total life expectancy in this country of 18½ months. They return back to their country, and that is an established pattern.

That being the case, isn't there some feeling for a temporary worker program or a not just mildly increased H-2 program, to deal with the reality of that migration that is of a temporary nature?

Reverend HESBURGH. I think one can argue it without being accused of being silly. I mean it is obviously a program that many people think of seriously. You do——

Representative LUNGREN. No, but I'm just trying to see how we are going to deal with that.

Reverend HESBURGH. But I simply say that that is an invitation to continue the illegality we have been trying to get rid of. Now it may be that if our system were put in and it were found to be inadequate, there would have to be another adjustment to it. Maybe the adjustment would be temporary worker. I don't know.

But I think our concern was that we have such a subclass that is being treated often in a subhuman fashion, first in the way they get here, what happens to them when they get here, and the problems they have going back and forth if they do return home, as many do, that we thought we should get rid of that illegality and get a little more humanity into the system.

Now it may be that if you take our whole system, you are still going to face a problem in this regard. For example, we put in the bracero program during the war, 1942 or 1943; 10 million people came and went in that program between then and 1965, I believe, when it was cut off. But the fact is that we had these enormous sweeps of rounding up 1 million people and sending them back to Mexico, and I don't think that is a very good picture of what one wants America to be like.

What we are trying to find, Dan, and I think this is an honest statement, we are trying to find one, a way of getting rid of the illegality that has come up in the past, which makes the law more restricted in the breach than in the keeping. Second, we are trying to get some system that is flexible like an accordian. If you put 500,000 in it will work; if you put 750,000 it will work. You can cut it back to a quarter of a million and it will work because it is a legal system that can be monitored and it is somewhat institutionalized in the employer arrangements in this country.

If you do all that and you still have a big problem, then I think it probably needs another adjustment, and I would be the first one to ask for it if that time came.

But let me remind you that there is another historical fact that most Americans don't think about. The whole State of Texas, Arizona, Utah, Colorado, New Mexico, and California used to be part of Mexico. It was about half of Mexico. We just grabbed it at one point. We paid a little bit, but it wasn't a big deal. And many people just look on this as an extension of their own country, many people in Mexico. It's one of those cases that one can't just blink at. It is a historic fact.

Senator SIMPSON. How is that for a later issue that will consume some of our activities? I hate to cut you off, but we will try to follow time limits, since we are running behind schedule.

Let me recognize Senator Grassley, Chuck Grassley of Iowa, a new member of the subcommittee of the Senate. He is a helpful, contributing member and is very actively interested. Senator Grassley.

Senator GRASSLEY. Father Hesburgh, if you have had a chance to analyze, I would like to know what effect the proposed budget, which obviously means less spending for the Immigration and Naturalization Service, will have on the Select Commission's recommendations in the following areas of increased border partrol activities, increased deportation of illegal immigrants, and increased investigation of visa overstays, and adoption of a fully automated system of nonimmigrant document control?

Reverend HESBURGH. The only honest answer I can give to that, Senator, is it would be disastrous. I mean everybody is criticizing the Immigration and Naturalization Service now. It has been called demoralized. It has been called understaffed. It has been without a full-time Director for over 2 years in both administrations, the present and past.

And I guess the only way I can describe the Immigration and Naturalization Service, and I am in favor of them and what they have been trying to do, the only way I can describe them is that they are like a fellow where you cut him off at the knees and then call him shorty. Really, we have asked them to administer an ambiguous, impossible law. We have had them do two things which are almost mutually contradictory, to enforce the law on one side and to counsel people on the other and treat them nicely. We have simply undermanned them. We give them a 2,000-mile border and one helicopter and say watch what's happening.

It is just, in my judgment, an impossible situation, and rather than criticize them, I think we ought to ask ourselves what have we asked them to do and what are we giving them to do it with, first in the law, and second, in the means of carrying out the law?

Now to say we are going to take that rather impossible situation and cut it further is, in the only word I can think of, disastrous.

Senator GRASSLEY. Thank you very much. Second, and my last question, and Mr. Chairman, I am going to have to leave but I want permission to ask some written questions of the other people who are testifying.

Senator SIMPSON. Without objection, so ordered. You bet.

Senator GRASSLEY. Once again, would you respond to the contention that the establishment of an employee eligibility system will promote employer discrimination, and those who appear to be foreign born will be harmed by implementation of such a system?

Reverend HESBURGH. I think it would do just the opposite, Senator Grassley, simply because many people are discriminated against right now in our country for employment simply because they may look foreign, whatever that might mean—it's hard to say what an American should look like because we come from so many different sources. I have five different nationalities in me and I suspect a few others besides that I don't know about.

The second thing is that if people don't speak English perfectly, they sometimes get discriminated against. And I would just like to say that having a simple means of identification means that when you ask for a job and you flash it, the fellow can't say that I didn't hire him or her because I thought they were an illegal alien. There are laws against turning down people because you don't like the way they look.

Senator **GRASSLEY**. OK, that is all the questions I have.

Senator **SIMPSON**. Thank you very much, Senator Grassley. Now let me recognize Congresswoman Pat Schroeder, new member of the House subcommittee and a neighbor from Colorado. Pat?

Representative **SCHROEDER**. Thank you very much, Father, and I really want to thank you for the time you have put in. I think one of the great things about this country is civilians are so willing to volunteer to do all this work, in return for so very little.

As we talk about this whole legalization process, I understand how you got there. One of the fears we all have is that every time we hear it's a one-time only program, it won't be, that the system is so overwhelmed that if you just get the numbers up high enough we will have to do it one more time and one more time.

Another aspect of the problem that I wondered if the Commission had looked at at all, is what is the profile of the average person who would qualify under this legalization process?

Reverend **HESBURGH**. I think we can give you a fairly good picture of that. First, the myth is that they are all Mexican Americans. That is not true. We compute that maybe half of them are Mexican Americans. The myth is that there are as many as 12 million. The best we are able to find out is that there is somewhere between 3.5 and 6 million at any given time, with a very high turnover but at least 30 percent coming and going.

Third, we think they tend to be younger people who are unemployed, who come here for employment purposes. They also tend to be married men who come here to get enough to live for the next 9 months. They come and work for 3 months and then go back. We uncovered all sorts of villages in central Mexico where for years, as far as people can remember, the eligible men in the family came for 3 months or 4 months and returned. And I'm sure there are other points that would be part of a profile. Do you want to add to that, Larry?

Mr. **FUCHS**. There are two questions, I think. One had to do with what was central to persuading people to agree to legalization. This is really the same thing that Senator Simpson asked about. That is, it is so important to get the information from a legalization program in order to help curtail future flows of undocumented aliens.

Representative **SCHROEDER**. Switzerland recently had a vote on whether or not they were going to let in the families of foreign workers. It was 80-2 against letting them in—a very heavy mandate.

And one of the pieces of that profile is that a lot of the people that you would be legalizing have families they would want to bring in. What have you done to the normal process of family reunification? Are there going to be people waiting 10 and 15 and

20 years, and where will they move, and what will their priority numbers be? Does it wreck havoc on the law that is now on the books?

Reverend HESBURGH. I think we have the numbers on that. Two things happen, really. They have had such a program in Canada and Australia, and I was also part of the Vietnam amnesty program of President Ford. And what always happens for some curious reason, a rather small percentage of those eligible for amnesty actually show up to claim it, I think because they have concern about whether it is a trap of some kind, and that is why we suggested that if we do put in a legalization program, it operate through voluntary agencies, people that are obviously concerned about people, people who speak their language, people who want to help them, not hurt them, and have a long record of this. This would greatly aid the program.

As to the actual numbers, I think Larry has them. We have studied those.

Mr. FUCHS. Well, we try to make conservative estimates on the outside, and we are estimating that it may be that as many as 1½ million will show up if the program is successful. You have 1½ million from Mexico. Outside, you would have 3 million from all over if the program were tremendously successful.

One can estimate also the derivatives of that number, the number of spouses and the number of children of spouses. And if you look when you get the staff report, if you look at pages in the section dealing with the characteristics of illegal aliens, you will see an answer to your question in full, much more fully than we can develop it here. You will see the summary of all of the findings from all of the creditable studies that have been done on the characteristics of illegal aliens, summarized in a chart form. It is not just a narrative. It is really quite easy to see. It gets into everything: marital status, how long they have been here, whether or not they are turnarounds or are here to stay and so on.

And from that, we derived estimates as to the number of family members who are overseas who would then be eligible under what is now second preference in our system. It would be a special preference. That is the minor children and spouses of resident aliens. And that is quite assimilable within the 100,000 number that has been assigned as additional to the 350,000 for the purpose of clearing backlogs, so that you get 450,000 in those first 5 years.

If it is not assimilable, they have to wait on line behind those who have already petitioned through the legal system or are on the backlogs. So it may be that a wife in that case would have to wait 3 years or 4 years on the outside. That is possible. Not everybody will get in immediately. But at least the husband will have the green card and can return home legally without worrying about the border crossing, which is something that may keep the families back there actually. You may find there is more going back and forth from these people, once they have a green card and feel safe with it.

Meanwhile, we will have gotten the information we need to curtail future flows, which is so important to this process.

Reverend HESBURGH. Congressman, can I just add one thing that might be useful to you and the other members? We find that when immigrants come from nearby, like Canadians, especially French Canadians, and Mexicans, they much less tend to take on citizenship. They would rather be resident aliens and go back and forth a great deal, as compared to say Koreans or Taiwanese or Filipinos.

Also, these people, to be legalized, have to qualify for the normal purposes of legalization. They would have to meet the exclusion. Second, they would have to be here for some number of years. They would have to have a nonpolice record. And on top of that they would have to be employed and capable of taking care of their minors.

Representative SCHROEDER. Thank you. I have many more questions but I will wait.

Senator SIMPSON. Thank you so much. Now we would recognize Congressman Bill McCollum, who represents citizens of the State of Florida, a State most significantly affected in recent times. Congressman McCollum.

Representative McCOLLUM. Thank you, Mr. Chairman.

Father Hesburgh, I know that much of what has been said in the Select Commission report about the numbers of undocumented aliens is an estimate, and I know you have been talking today about some figures, in answering Congresswoman Schroeder's questions.

I have in my hand a report of April 6, 1981 that I am sure you are familiar with from the Government Accounting Office, which indicates some things that I think are important to us, and I would like to ask your response and reaction to one or two points in it.

It says, specifically on the subject of the number of undocumented aliens residing in the United States, their conclusion is unknown. The statement inside the cover, the first page of the report, says, "There is simply no statistically reliable measurement of the undocumented alien population. Through the years, estimates have ranged from .6 to 12 million."

And on down in the body, talking about the lastest census figures, the comments are made:

> The Census staff used existing studies to form an estimate of undocumented alien population for the Commission. The staff notes that the estimate is based not on empirical research, but speculation.

And I also note that one of my colleagues checked with the Library of Congress earlier about the question of how many, they determine, according to their records, of the undocumented aliens are estimated to be Mexican. The estimate there, instead of the 50 percent figure you used, was 85 percent from the Library of Congress.

Isn't it true really, Father, that when we talk about undocumented aliens, we are really talking in terms of speculation?

Reverend HESBURGH. In large measure, yes. We simply could not find one piece of research in which one could have full faith that this was the answer. However, among all of the research that has been done, and we looked at all of it, we looked at the interpretations of all of it, we came out with a figure that I think is generally accepted, maybe not by the Library of Congress, but it was generally accepted that the 3.5 to 6 million people was as close an estimate as you could get, especially because of the revolving nature of this number.

Now on the 50-percent Mexican, I would like to ask Larry because he worked in this field directly.

Mr. FUCHS. Let's get at this. That report, as you know, relies heavily on our reports. They are really just quoting us.

A, it is perfectly true. There is no accurate count that you can rely on, of undocumented aliens. There is an accurate range now for the first time, and that accurate range is based upon the work of the three senior demographers of the Census Bureau, led by Jacob Segal, for the Select Commission, which is that in 1978, at any one time there were no fewer than 3.5 and no more than 6. They said no more than 5 in all probability. We put 6 on it as an outbound and went along with that.

Now from that, taking the outbound of 6, and that is at any one time, that is disputed by the CINIET studies done in Mexico and disputed by some others, but this is based upon a review of eight studies, all of whom have imperfect methodologies. All of them are based on heroic assumptions, but they are all ingenious and credible methodologies done by credible researchers. From none of them would you go beyond the upward bound of 6; nor would you go below the lower bound of 3.5.

From the 6, we made our own calculations and estimates as to the numbers possibly eligible for legalization. That was 3. How many would show up of those eligible? That is to say assuming certain things that the Congress does in order to provide for eligibility. And there we made another estimate of an outward bound of 1.5, and that is how you get to the 1.5. And from that we made another estimate as to the derivatives overseas, based on the studies of characteristics which we have, which you will see in the staff report.

So all of these must be thought of as estimates, but with ranges which are as reliable as we can make them.

Representative McCOLLUM. I admire the statistical range that you went into here, your ability to perform with these figures, but it sounds like we're winging it with the best guess available.

Mr. FUCHS. The best guess available. That is exactly right.

Representative McCOLLUM. I want to change the subject. I think the point is made, and I wanted to be sure I understood and you agreed with that point. I am very concerned in my State with the number of asylees or applicants for asylum or refugees, whatever term is used, and not only from Cuba but from Haiti. I recently visited my colleague Mr. Lungren's State and saw the problem of the Indochinese refugees and the tremendous absorption problems.

I know the Select Commission report addressed that problem and it talked in certain ways about dealing with these matters, but one of the things that troubled me has been the fact that it really has not addressed and did not address, Father, the question of the Presidential prerogatives that seem to be so easily abused now in letting folks come into this country for one reason or another, for whatever reasons, whatever pressures.

It has been suggested by some, and I am just asking your reaction to this, that perhaps in the Commission's recommendation regarding the total number of people to be allowed in here, immigrants for visas or nonimmigrants in the asylum situation if you want to call that refugees in another category, that saying from the standpoint of refugees they should be unlimited and they shouldn't be included in the total number, is wrong. Instead there should be an inclusion in the total number of refugees and those seeking asylum, in order to bring pressure on a President and on an administration to only let so many in because of the trouble of absorbing these people. What do you think of that?

Reverend **Hesburgh**. Congressman McCollum, we didn't want it to be unlimited. We simply said that we don't want to count it in the figures we give because in a given year they will be skewed by what a President and a Congress does. What we said was we will go with the 1980 refugee law, which is a new law, which took an average of some 15 years and came up with the figure 50,000, left an escape hatch saying that if there is an emergency such as there was in the Cuban thing, the President, consulting with the Congress, can go beyond that.

Representative **McCollum**. But those seeking asylum aren't included in that and those seeking asylum are where we get the Cubans and the Haitians right now, and that bothers me a great deal.

Reverend **Hesburgh**. Well, that was because the first case we had after the refugee law was passed by the Congress, the refugee law was not applied because they said we're up a creek because these are——

Representative **McCollum**. But they are not in your recommendations anywhere either to include them.

Reverend **Hesburgh**. Well, in our recommendations we really felt that there is no way on Earth you are going to hobble a President or a Congress and say what they are going to do given an emergency. As you will recall, when the Cuban emergency happened, it was pretty well cut off at about 50,000, but we were in the middle of a campaign. At that point one of the campaigners, Mr. Reagan, said we are an immigrant Nation; we should be compassionate. At that point the other campaigner, who happened to be President of the United States, said we receive you with open hands and open hearts. That is an invitation for everybody to go to Muriel Harbor and get on a boat, which is what they did.

Now I don't think our Commission can control those kinds of actions under those kinds of circumstances, and it seemed more honest to control within the legal immigration normal channels, to say we go with the refugee law as passed by the Congress in 1980, and if there is an additional problem outside of that, it is again so speculative and so dependent on emergencies, on a Presidential reaction, on a congressional reaction, that there is no way on Earth we can calculate it, but we would like to think we are staying with the 50,000 in the law. It can be expanded somewhat but I would think shouldn't be expanded infinitely.

Senator **Simpson**. Thank you very much. I now recognize a new member of the subcommittee of the House, who replaced Bob Drinan, a person that I greatly enjoyed and with whom I didn't always agree. He had some titanic struggles during the last 2 years. That means you can't run for this job either, Ted, I want you to know. I would now recognize Congressman Barney Frank, of Massachusetts.

Representative **Frank**. Thank you, Senator.

Father Hesburgh, we are all grateful to you for taking the job on. I would like to talk about some of the positive aspects of immigration. Before going to Massachusetts I grew up and I went to the Statue of Liberty. We ought not, it seems to me, be regarding immigration totally as a burden.

For instance, with regard to the guest workers, am I correct? I take it that one of the implicit points about the debate about a guest worker program is that there is apparently agreement that the people who come here from Mexico, many of them are in fact very good workers. They are apparently very desirable citizens, and there is apparently some willingness to make sure that we keep them there.

Doesn't the thrust that says that we need some guest workers suggest that in fact maybe we have a need for some of these people?

Reverend HESBURGH. The problem was you are talking about that need over against an unemployment figure of somewhere in the area of 7 to 8 percent. And I think again we thought there should be flexibility built into the program. If you have many millions of people unemployed and everyone coming in——

Representative FRANK. I understand. I am not advocating the guest worker program.

Reverend HESBURGH. But on the comments you make about Mexicans being good workers, there is just no question about it. In certain areas of work they have been absolutely fantastic.

Representative FRANK. I guess the question I have is, If there are a group of people in Mexico, and we're talking about the guest worker program, who are apparently very desirable workers, apparently very desirable citizens to have here, or at least residents, why stop at letting them be guest workers? Why not let them come and be like people?

Reverend HESBURGH. Yes; you can green card them and give them a chance to work, but the fact is that you are constantly being pressed by what I think is a very legitimate question, that you have 35 to 40 percent of our minority youngsters unemployed. You have several millions of other people unemployed because of changes in industry, automobile, and other.

And it just seems to me that the No. 1 obligation of this country is to its own minority, its own class that is unemployed and are the first ones fired. That is a problem that has been with us a long time.

Representative FRANK. That is No. 1. I guess that is the kind of moral calculation I would like to get into. The Senate chairman raised the question in his statement and it was in the Washington Post that if we just project 100 years from now, a third of the people in this country will be people whose families weren't here today. It makes me a little nervous since I wouldn't be here today by that 100-year-ago standard. I know there are linguistic difficulties but a lot of the people who came in the last 100 years didn't talk so good either, and some of us are still having a little difficulty with the language, as you can tell. [Laughter.]

But I understand the constraints, and nobody I guess thinks we are going to just throw the doors open. But what is the moral obligation of a very wealthy country, in addition to policies which in fact better provide for our own needy and our own minorities? What of our obligation to share in a world in which there is some inequality of resources? And I am for economic development that is going to help, but where we have people who want to come here, who want to work, who are apparently considered desirable, and if they weren't considered desirable there wouldn't be advocacy of a guest worker program.

I just hope that somewhere in our moral calculus there would be points given for people, maybe our own are No. 1 but it seems to me others can come No. 2.

Reverend **Hesburgh**. You're quoting my testimony.

Representative **Frank**. Well, how do we translate this into——

Reverend **Hesburgh**. I think we translate it by enlarging, as I said we try to close the back door, which is the illegal entry, as much as we could, knowing it will never be closed completely. Second, we tried to open the front door a little wider. We were criticized for that because we said enlarged immigration is good for America. It is part of our heritage. But it can't be simply uncontrolled when we have internal problems with people who have been here for 7, or 8, or 10 generations, some of whose relatives were brought here by force, who are not able to work. Let us clear that problem up and let us realize that is our No. 1 problem, to take care of our own citizens. Then we should be as generous as possible.

Let me say, third, and this didn't come up as strongly as it should have in my testimony, the only long-range answer is economic development in Mexico, economic development in the Caribbean, economic development in those areas which we can help right now as a generous country.

Representative **Frank**. The total number of people you would allow, you're proposing an increase to what, 375,000?

Reverend **Hesburgh**. Yes; we are going from 270,000 to 350,000, plus 100,000 a year for 5 years to take up the slack. We have 1 million people waiting in line right now.

Representative **Frank**. Is there an economic constraint that says we couldn't take any more in your judgment?

Reverend **Hesburgh**. We have put in a new system that clears up the illegalities of the past and makes a more rational system for the future, and it can be expanded——

Representative **Frank**. I appreciate that, Father, and I realize it is going to be somewhat arbitrary because any cutoff point is. In fact the 350,000 seems to me a little on the low side. Do you think there is an economic constraint that forces us to cut it off there?

Reverend **Hesburgh**. Some people thought it was too high. Some thought it was too low. That is what you get into on every commission. Let me say that outside of that 250,000 is the number of refugees allowed in, the number of asylees allowed in. They are not in the quota. Outside of that are all of the reunification of families, which would amount to probably another 150,000 a year at least, and maybe more. Outside of that are people who are going to be legalized, we hope, which may number anywhere from 3 to 6 million.

So I don't think we are talking about a niggardly approach. We are not talking about an approach which is opening the doors absolutely wide. I simply think that there has to be a flexibility where this country admits as many as it can, given the current socioeconomic——

Representative **Frank**. I appreciate that. I guess I was a little bothered by the tone of some of the questions. It seems to me the time to worry would be the time when nobody wanted to come here any more. That is when I would start to feel that we had a real problem. I think what we have now is a somewhat better one to deal with.

Reverend **Hesburgh**. Yes; nobody is waiting for a visa to get into Russia, among the 16 million refugees in the world.

Representative **Frank**. Actually I think my predecessor was for awhile from time to time. They considered him kind of obnoxious and didn't want to let him visit.

Senator **Simpson**. Thank you very much.

Mr. **Fuchs**. Congressman Frank, if I could just give you the numbers so you will have them in the record. Father Ted has asked me to put this in the record.

In addition to the 350,000 numerically restricted, there will be in the near term about 150,000 persons who are not numerically restricted, and that could go to 160,000, 170,000, as projected over the next 50 years.

So in addition to that, they did keep the refugee emergency provision in, and that was the main reason, as Father Ted said in the testimony, for the caution on the numerically restricted side.

Senator **Simpson**. Well, that concludes this portion of the hearing, and what particularly impresses me is the cast of Congressmen and Congresswomen who will be examining this issue for the next 2 years. And thank you so much, Father Ted, for your assistance and your very expressive testimony. Dr. Fuchs and Dr. Thomas, we will be calling you from time to time to just check up.

Reverend **Hesburgh**. Thank you both for having us.

Representative **Mazzoli**. Father, thank you all very much.

Senator **Simpson**. The next portion of the hearing will consist of three panelists: Mr. Perry Ellsworth, executive vice president of the National Council of Agricultural Employers; Mr. Robert Neville, general counsel, National Restaurant Association; and Mr. Richard Wright, counsel, Sherman & Howard of Denver, formerly executive director of the Mountain States Employers' Council. But first we will have a brief 3-minute recess.

[A brief recess was taken.]

Senator **Simpson**. The hearing will come to order and we will proceed because we are running behind schedule and do not want to inconvenience the people who have come a long way to testify.

So we have now these three gentlemen I have previously introduced, Mr. Perry Ellsworth, Mr. Robert Neville, and Mr. Richard Wright. Nice to see you. I think you have been advised of the time limitations on your testimony. Your entire remarks will be accepted into the record without any change, but we do have the time limitation and the light will be on. Then we will have the questions from the congressional panel with the same time limitation as with the previous witness.

Please proceed.

STATEMENT OF PERRY ELLSWORTH, EXECUTIVE VICE PRESIDENT, NATIONAL COUNCIL OF AGRICULTURAL EMPLOYERS

Mr. **Ellsworth**. Mr. Chairman, my name is Perry Ellsworth. I am the executive vice president of the National Council of Agricultural Employers. Sitting behind me in the light suit is Mr. Ashton Hart, who is president of my association and serves as secretary of the Valley Growers Cooperative in Milton, N.Y.

Our membership is nationwide and is comprised of individuals, companies, and associations working together for a reliable source of able, willing, and qualified agricultural labor, within a framework of equitable Federal laws and regulations.

Certainly the select commisson had a herculean task to perform and I compliment it on the job that it has done thus far. That is not to say that my association necessarily agrees with what its conclusions have been, but certainly in a job of that magnitude there are bound to be some minor differences.

Because my association and its members profess no expertise on the other subjects covered by the Commission's report, my comments will be limited to those portions which affect agricultural employers and agricultural labor.

My association does not have a specific position for or against employer sanction legislation. It does, however, have a definite position regarding what must be done if legislation is enacted to impose employer sanctions. And they are four in number.

We suggest that any legislation must have the word "knowingly" in there, that an employer shall not knowingly employ an undocumented worker.

Second, the legislation must provide a mechanism for review and appeal.

Third, it must provide a reliable means of verifying employment eligibility, and we have already discussed that to some extent here today.

And it must be accompanied by a program which will allow agricultural employers to speedily obtain workers to make up for any U.S. worker shortfall.

When we get to the question of amnesty, it is no secret that undocumented workers are employed in agriculture, and the number so employed, however, is far less than half of the total undocumented workers in this country. If amnesty is granted to those undocumented workers currently in this country, my association's members have a great fear that large numbers, if not all of those workers granted amnesty will seek other jobs—year-round employment in the cities, where exposure may be greater to border patrol activity and why they have not been there up to the present time.

This then brings to mind the need for workers to fill those slots which are left vacant by the absence of undocumented workers. We were very pleased to see that the Commission has recommended the continuation of the H-2 program, and that it be streamlined.

Now I think there is a difference between what I consider a guest worker program, of bringing guest workers into the country, sort of the way it was done in Europe, as I understand it, and the H-2 program, which is a more specific program based on specific situations and specific times and places.

We suggest, however, that the Commission's recommendation to remove current economic disincentives to hire U.S. workers by requiring U.S. employers to pay unemployment compensation taxes and social security taxes on the earnings of such workers bears examination. If you want to get into it, I can list in detail the costs that are incurred by any grower who brings in H-2 workers, which far exceed any savings that he may realize in those instances where he is not required to pay unemployment compensation or social security.

Second, along that same line, my association feels that in principle it is somewhat inconsistent and perhaps might even be called wrong to require an employer to pay taxes on the earnings of temporary foreign workers who will never have an opportunity to use the benefits for which those taxes are paid, because those workers would be returning to their own country and would have no eligibility whatsoever.

Now I don't know how my time is running, Mr. Chairman, but I was asked to go quickly. I have. This has been a very rapid summary. I will be willing to answer questions and if I can't we'll try Mr. Hart. If he can't, we'll send them to you.

[The prepared statement of the National Council of Agricultural Employers follows:]

STATEMENT
of the
NATIONAL COUNCIL OF AGRICULTURAL EMPLOYERS

at
JOINT HEARINGS
before the
SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY
of the
U. S. SENATE COMMITTEE ON THE JUDICIARY
and the
SUBCOMMITTEE ON IMMIGRATION, REFUGEES AND INTERNATIONAL LAW
of the
U. S. HOUSE OF REPRESENTATIVES COMMITTEE ON THE JUDICIARY

The National Council of Agricultural Employers appreciates this opportunity to make known its views regarding "U. S. Immigration Policy and the National Interest," the final report of the Select Commission on Immigration & Refugee Policy. I am Perry R. Ellsworth, Executive Vice President of the Council.

NCAE is a voluntary membership organization. Its membership is comprised of individuals, companies and associations working together for a reliable source of able, willing and qualified agricultural labor within a framework of equitable Federal laws and regulations.

Comments on the report of the Select Commission will be limited to those portions which affect agricultural employers and agricultural labor.

Employer Sanctions Legislation

> "The Select Commission recommends that legislation be passed making it illegal for employers to hire undocumented workers."

The National Council of Agricultural Employers does not have a specific position for or against employer sanction legislation. It does, however, have a definite position regarding what must be done if legislation is enacted to impose employer sanctions.

1. Such legislation must contain a prohibition against knowingly hiring undocumented workers. Absence of "knowingly" would expose employers to unjustified citation. There is no way that an employer can be absolutely certain that a document presented to establish citizenship or to prove legal authorization for employment is bona fide. As is the case with every law enacted, the overwhelming majority of citizens will abide by the law, but there are occasional honest errors. While it may be difficult to prove "knowing" action, simple justice would seem to dictate the use of the word in this instance.
2. Such legislation must provide a mechanism for appeal.
3. Such legislation must provide a reliable means of verifying employment eligibility. This is especially true in agriculture where, unlike a non-agricultural business which hires a limited number of persons on any given day, large numbers of workers are frequently hired at the start of harvest. A procedure requiring extra paperwork is not desireable, for agricultural employers have every minute of their working hours filled with harvest details. This is especially true where a large labor force turnover exists or where "day haul" workers are employed. Another requirement, peculiar to agriculture, is that employers must be able to verify employment eligibility in the field. In many parts of the country, workers are hired in the field, work in the field and are paid in the field. Their foreman is the "personnel director." Such workers may never lay eyes on the company's office, much less be processed by it.
4. Such legislation must be accompanied by a program which will enable agricultural employers to speedily obtain workers to make up for a U.S. worker "shortfall." More on this later.

Enforcement Efforts in Addition to Employer Sanctions

"The Select Commission recommends that the enforce-

> ment of existing wage and working standards legislation be increased in conjunction with the enforcement of employer responsibility legislation."

The Commission states that the purpose of this recommendation is "(t)o ensure that employer sanctions and the employee eligibility identification system result in the improvement of wages and working conditions for those authorized to work in the United States."

NCAE and its members find absolutely no fault with the enforcement of the laws of this land. Such enforcement should be carried forward even if there are no employer sanctions. It seems a little odd, however, for the Commission to imply that in some way the enforcement of wage and hour laws will contribute to the enforcement of employer sanctions. Employer sanction laws, if enacted, should be enforced. Wage and hour laws should also be enforced, employer sanctions or not.

Legalization

> "The Select Commission recommends that a program to legalize undocumented illegal aliens now in the United States be adopted."

It is no secret that undocumented workers are employed in agriculture. The number so employed, however, accounts for far less than half of the total undocumented workers present in this country. Exact numbers are impossible to ascertain, but for purposes of discussion only, let us assume that there are between 250,000 and 500,000. Were amnesty to be granted to those workers, no one knows whether they would remain at their agricultural work or move to urban areas in search of year 'round employment. NCAE is inclined to believe such workers would leave agriculture. This would create an enormous "shortfall" of agricultural labor—one which there are insufficient numbers of U.S. workers to fill, NCAE believes. If NCAE's views prove correct, the need for a method of speedily obtaining workers would be critical.

Parenthetically, NCAE objects to the statment on page 74 of the Commission's report:

> "Some Commissioners also believe that legalization would acknowledge that the United States has at least some responsibility for the presence of undocumented illegal aliens in the country since U.S. law has explicity exempted employers from any penalty for hiring them."

The law is clear. Persons must enter this country legally. To infer that employers are responsible for not enforcing the law is wrong. There are probably exceptions, but it is safe to say that very few, if any persons enter this country illegally with an agricultural employer's promise of employment. To place the blame on the "pull" of potential employment in the United States is to overlook the economic "push" factor at work in the country whence such persons come.

H-2 Temporary Workers

> "The Department of Labor should recommend changes in the H-2 program which would improve the fairness of the program to both U.S. workers and employers. Proposed changes should:
>
> " •Improve the timeliness of decision regarding the admission of H-2 workers by streamlining the application process;
>
> " •Remove the current economic disincentives to hire U.S. workers by requiring, for example, employers to pay FICA and Unemployment Insurance for H-2

> workers; and maintain the labor certification by the U.S. Department of Labor.
>
> " •The Commission believes that government, employers and unions should cooperate to end the dependence of any industry on a constant supply of H-2 workers.
>
> "The above does not exclude a slight expansion of the H-2 program."

NCAE favors the recommended improvements in the H-2 program. The present procedures followed by the U.S. Department of Labor require large expenditures of money, time and paperwork. Each year the result is the same. There is a shortage of workers for certain crops and the use of H-2 workers is approved.

Present Department regulations require that the U.S. Employment Service must have 60 days lead time to try to fill job orders filed by employers. This could be reduced to 30 days. Federal and State offices now have computers which provide almost instant access to data on available workers.

NCAE understands that the U.S. Employment Service is working now to reduce the present paperwork burden involved in submitting job orders and requests for certification for employment of H-2 workers. This is long overdue and much appreciated.

The recommendation to "remove the current economic disincentives to hire U.S. workers by requiring, for example, employers to pay FICA and Unemployment Insurance for H-2 workers," bears examination. Many voices have raised the refrain, but hard, cold statistics refute the charge that there is an economic incentive to seek H-2 workers. In plain, simple words, there is no economic advantage. In fact, H-2 workers are more costly to agricultural employers than are U.S. workers, and the use of H-2 workers increases the cost of labor, both U.S. and H-2. Consider these facts:

- With the exception of sugar cane harvest, for which historically, employers and the Department have been unable to recruit U.S. workers, those growers who utilize H-2 workers also hire large numbers of U.S. workers. In fact, in nearly every situation, U.S. workers outnumber H-2 workers. This is logical, because under Department regulations (20 CFR Part 655) an employer is required to give first priority to U.S. workers.

- Employers who hire H-2 workers must pay, per contract with the British West Indies Central Labour Organization, transportation from the worker's home to the job site and return. (This money is not advanced. BWI workers borrow it, if necessary, from a West Indian bank. Employers reimburse workers after they have been on the job a stated number of days. Money to pay return travel is advanced to workers at the end of the work contract.) For Florida sugar cane cutters this amounted to $174 in 1980-1981. For apple growers in the northeast, the figure was as high as $279, the average being $260 for 1980. Were an employer to hire only U.S. workers and not use the U.S. Employment Service, he would not have to pay for any transportation.

- Employers who hire H-2 workers must post a bond of $200 per worker to assure workers' return to their own country. This is not required for U.S. workers.

- Employers who hire H-2 workers must furnish free housing, built to meet Department of Labor standards, to all workers hired. Were a grower to hire only U.S. workers and not use the U.S. Employment Service, he would not have to furnish housing or could charge rent for housing furnished.

- Employers who hire H-2 workers must furnish all workers (U.S. and H-2) with three meals per day for which they cannot charge more than $4.00 per day unless they receive special permission from the Department to charge up to $5.00, which is the absolute ceiling. If employers hired only U.S. workers there would be no requirement to furnish meals and no ceiling on charges if meals are furnished.

- Employers who hire H-2 workers must furnish all workers free transportation from camp to work site and return. This requirement would not apply under other circumstances.

- Employers who request certification for H-2 workers are required to include, in their Employment Service Job Order, assurances that workers will be paid at least the Department-mandated Adverse Effect Wage, and are then bound to pay U.S. workers at that rate even if the Department finds sufficient U.S. workers to fill the job order and the employer does not hire a single H-2 worker. The Adverse Effect Wage Rate is always higher than the prevailing wage rate. If employers did not request certification for H-2 workers, the lower prevailing wage rate or the State or Federal minimum wage would apply.

- Employers who request certification to hire H-2 workers must guarantee all workers employment for at least three-fourths of the workdays in the total period during which H-2 workers are employed. This requirement would not apply in other circumstances.

When one adds up the direct money osts and the indirect time costs involved in requesting certification for or hiring H-2 workers, it becomes obvious that reduced costs are not a factor. Quite the opposit is true.

It is important to keep in mind that agricultural employers who request certification for H-2 workers do so because they are unable to find enough U.S. workers willing to do the job. It is also important to keep in mind that employers cannot bring a single H-2 worker into this country unless and until the Secretary of Labor certifies that there are insufficient U.S. workers available to fill the job orders filed by agricultural employers. Then, it is important to keep in mind that employers granted certification must meet higher direct and indirect costs, as discussed earlier, just so they will have enough workers to harvest their crops.

Exactly how all of the above facts work together to provide "disincentives" to the hiring of U.S. workers is rather difficult, if not impossible to grasp.

Furthermore, it seems totally inconsistent with the intent of both the Unemployment Insurance and the Social Security programs to require payment into the funds on behalf of persons who will not be able to benefit from them. H-2 workers are temporary workers. They may never return to this country a second time. They are not citizens of the United States. Agricultural employers do not object to paying both taxes on the earnings of U.S. workers. In fact, they do so. Agricultural employers do object, however, to paying taxes into a program designed to give workers certain protections when those very workers are now and always will be ineligible to receive benefits from that program. It is extremely difficult to understand how forcing employers to pay such taxes on the earnings of such workers will protect U.S. workers when H-2 workers cannot be admitted as long as there are U.S. workers available and willing to take jobs offered.

NCAE supports the recommendation of the Commission that steps be taken to end the need for H-2 workers. Certainly, the easiest possible course of action for employers is to hire U.S. workers, but until employers can find enough U.S. workers able and willing to fill their needs, the H-2 program must be improved and continued.

The statement that the Commission does not exclude a slight expansion of the H-2 program is welcomed. Let the record show, however, that agricultural employers are not opposed to a contraction of the program if there are enough good U.S. workers available.

In recent years, there has been a hue and cry raised throughout the land regarding the employment of undocumented workers. In an effort to reduce the number of such workers in agriculture, several voices have suggested the use of H-2 workers. "You will at least have a legal work force," they said, "and will not contribute to the 'pull' of undocumented workers to this country." The moment employers made their first move toward dropping their illegal work force in favor of using H-2 workers, the Department of Labor "lowered the boom" on them, making the process almost impossible for those growers. At times it even resulted in law suits. NCAE supports the H-2 program as a viable alternative to the hiring of undocumented workers, and urges U.S. Department of Labor cooperation to that end.

Finally, the number of H-2 workers admitted into this country for agricultural employment is miniscule when compared to the total agricultural work force of over 2 million persons. NCAE feels that objections voiced are greatly out of proportion to the actual situation.

The National Council of Agricultural Employers stands ready to furnish additional information if requested.

Representative MAZZOLI. Thank you, Mr. Ellsworth. We appreciate that. What we would like to do is continue with your panelists and then to follow up with questions. So Mr. Neville, you may proceed, please.

STATEMENT OF ROBERT NEVILLE, GENERAL COUNSEL, NATIONAL RESTAURANT ASSOCIATION

Mr. NEVILLE. Mr. Chairman and members of the subcommittees, I am Robert Neville. I am the general counsel for the National Restaurant Association. We appreciate the opportunity to express our views on only one aspect of the Commission's report, and our views as a business league will be confined to that one aspect of the Commission's recommendations that legislation be passed making it illegal for employers to hire undocumented workers.

Unfortunately, the Commission was apparently unable to resolve the problem that has now come to you. The Commission was in general agreement that there should be a sanction against employers, and we don't disagree with any of the Commission's conclusions on that score. But they were almost evenly divided in how to go about that, and I would like to restrict my comments today to some suggestions as to how you might address the problem.

Our principal concern is with the soundness and the essential fairness of merely shifting the main thrust of the enforcement burden from the Government to the employer. I think all of you recognize that and I think Father Hesburgh recognized it far more eloquently than I can. In fact, Father Hesburgh has said everything that I can tell you today. I will continue my statement only on the off chance that I add some new light to what he has already told you.

We feel very strongly that requiring employers to make determinations of the status of their employees as job applicants involves them in intricate problems of constitutional and immigration law. As Father Hesburgh pointed out, the immigration law is generally reputed to be about as complex as our Tax Code. And we don't believe that employers generally, and particularly in our industry, which is made up largely of small businessmen and women, that they are equipped to handle this kind of problem.

In order to avoid the problems that would arise if you pass a simple statute imposing sanctions on employers who hire undocumented aliens, in order to avoid those problems and the administrative recordkeeping burden that may go with such a simple law, most of our employers, we think, to protect themselves, would adopt a general play it safe attitude. And this was a point that Father Hesburgh elaborated on a great deal and we certainly share, although we hadn't seen his views before, we share his fears. We feel that employers generally would simply be unwilling to take a chance on different looking and sounding Americans, whatever those may be. The seemingly inevitable result would be discrimination in employment, as we see it.

In all fairness, we think that the Government must provide the means by which an employer can easily determine whether a person is eligible for employment, and this guidance should be clear, simple, objective, and should not increase the businessman's already considerable recordkeeping and paperwork burden.

It should also be clearly delineated in the legislation itself and not left to the interpretation and continuous refinement of various Government agencies. And we think it is possible to do that.

During the hearings on the 1975 bill to impose sanctions on employers who knowingly hire undocumented aliens, the then attorney general proposed that the law include a prohibition of payments of Federal funds to illegal aliens. But he pointed out that he knew of no existing procedure by which Government employees who were charged with enforcing this could determine whether an applicant or recipient of Government funds is lawfully in the United States.

And the point I want to make is that if Government employees can't make that determination, neither can employers in the general field of business.

Mr. Chairman, my whole suggestion to this subcommittee today is that we are concerned that employers—we want it to be fair for both prospective employees, job applicants, and employers. And we are concerned that the employer not be placed between the rock of the Justice Department and the hard place of the EEOC. And that is where a law that is not precisely drawn and not simple to administer will place them.

I realize that the Commission has wrestled with these problems and Father Hesburgh has stated the position far more eloquently than I, but that is the information that I have to give you this afternoon.

[The prepared statement of the National Restaurant Association follows:]

TESTIMONY OF THE NATIONAL RESTAURANT ASSOCIATION

ON

THE REPORT OF THE SELECT COMMISSION ON IMMIGRATION

AND REFUGEE POLICY

BEFORE

THE SUBCOMMITTEE ON IMMIGRATION AND

REFUGEE POLICY, U.S. SENATE, AND

THE SUBCOMMITTEE ON IMMIGRATION,

REFUGEES, AND INTERNATIONAL LAW, U.S.

HOUSE OF REPRESENTATIVES

MAY 5, 1981

Mr. Chairman and members of the Subcommittees, my name is Robert Neville. I am general counsel for the National Restaurant Association.

The Association has about 10,000 organizational members and through the membership of many firms operating multiple units we represent over 100,000 foodservice establishments all across the country. Our affiliation with 47 state restaurant associations increases this number significantly. Our industry employs over five percent of the nation's workforce and is the largest retailer in terms of numbers of establishments, the vast majority of which are small business.

We have been invited to express our views on the Final Report and Recommendations of the Select Commission on Immigration and Refugee Policy. We appreciate the opportunity to do so. Our views as a business league will be confined to the Commission's recommendation that legislation be passed making it illegal for employers to hire undocumented workers. The Commission favored employer sanctions by a large majority, but appears to have split nearly evenly on whether these sanctions could rest upon some existing form of identification or whether some system of more secure identification is needed before employer sanctions are applied. Because of the wide diversity of views among members of the Commission, this issue is not clearly resolved in its Report. Since it directly affects all employers in our industry, we offer the following observations.

At the outset, we want to make clear that our association does not condone the knowing hire of illegal aliens. We recognize the many economic and social problems that the presence of large numbers of illegal aliens create and the necessity to seek reasonable solutions to those problems. We are deeply concerned, however, about legislative proposals which seek simple solutions primarily by prohibiting the employment of undocumented aliens. It is very important that all the effects of such an approach on the business community - particularly the small businessman - be carefully considered and evaluated before adoption.

As Mr. David Carliner, representing the American Civil Liberties Union, observed in testimony before the Subcommittee on Immigration, Citizenship and International Law of the Committee on the Judiciary, House of Representatives, in 1975, "Before an employer can be prosecuted for the purpose of a citation, a fine, or an ultimate criminal penalty, as we know he must be guilty of willful conduct and the only way in which willful conduct can be established on his part is to have some kind of mechanism whereby the employer knows that the alien he is about to employ is here illegally."

Our principal concern is with the soundness and fairness of merely shifting the main thrust of the enforcement burden from the Government to the private employer. Congress should first carefully consider whether it is, in fact, equitable to shift to the private sector this enormous task which is, in reality, rightly a function of the Government. Enforcement of our existing laws prohibiting aliens from working and preventing illegal entry in the first place is, after all, the proper role of the Government. It is essential that the decision as to who will bear the main responsibility in this troublesome area be carefully evaluated at the outset. This evaluation process should include a full appreciation of the existing burdens imposed on the private employer, such as recordkeeping, paperwork, compliance with regulations growing daily in number and complexity, etc., and his ability to absorb an additional investigative role with the attendant increased costs and risk of penalties.

Requiring employers to make determinations of the status of their employees and job applicants is involving them in intricate problems of constitutional and immigration law which most are just not equipped to handle. It is a difficult and complex task and most employers simply do not have the necessary investigative resources to protect themselves against an inadvertent violation. In order to avoid the additional administrative burden and expense and to protect himself from possible prosecution, the businessman is most likely to "play it safe." He would be reluctant to hire or keep in his employ anyone who did not have clear documentation and would be particularly wary of those with foreign accents and racial characteristics. He simply would be unwilling to take a chance on "different" looking and sounding Americans.

The Mexican American Legal Defense and Educational Fund and the U.S. Civil Rights Commission have both expressed a similar concern over this potential encouragement to discriminate as the only safe course for an employer to follow.

The seemingly inevitable result would be discriminatory employment practices against those who could not easily and clearly prove that they were legally entitled to work. This, of course, would be totally unfair to those being discriminated against, but it also would place the businessman in a precarious position as well. In his efforts to comply with his responsibilities in the undocumented alien area, he could easily find himself facing charges by those government agencies responsible for enforcing our laws prohibiting discrimination in employment. It is not fair to place our nation's private employers in this "Catch 22" predicament.

We feel strongly that if the Government, for whatever reason, decides that any solution must involve the business community, then it should also include some mechanism which will provide the employer with clear and objective guidelines upon which he can base his actions with assurance that he is acting within the law.

In all fairness, the Government must provide the means by which an employer can easily determine whether a person is eligible for employment and this guidance should be clear, simple, objective, and not increase the businessman's already considerable recordkeeping, paperwork, and other administrative burdens. It should also be clearly delineated in the legislation and not left to the interpretation and continuous refinement of the cognizant government agencies. Some have suggested that the Social Security card be used as the identity mechanism, while others have opposed this approach as smacking of a police state. Whatever form it takes, we are convinced that such a clear and simple procedure is absolutely essential to employer involvement.

While the focus heretofore has been on the employer's role in the solution to the undocumented alien problem, any overall plan must also include active participation and accountability by the various government agencies charged with administering the existing social welfare and assistance programs -- welfare, foodstamps, hospitalization, schooling, day-care centers, etc. The provision of these benefits to undocumented aliens is certainly part of the overall problem, as their availability is a factor in attracting undocumented aliens to this country. If the task of denying employment is to be placed on the private employer, the cognizant government agencies should bear an equal responsibility to deny benefits to ineligible recipients. If it is to be an offense for an employer to hire an illegal alien, in fairness, the government official administering any of the benefit programs should be held to the same accountability.

During hearings in 1975 on a bill to impose sanctions on employers who knowingly hire undocumented aliens, the then Attorney General proposed that the law include a prohibition of payments of Federal funds to illegal aliens, but he pointed out that he knew of no existing procedure under which government employees charged with administering these funds could determine whether an applicant or recipient is lawfully in the United States. Employers are in the same situation.

Prior proposals to impose sanctions on employers have usually included provisions for penalties for each undocumented alien in the employ of the employer on the effective date of the Act. It is important to recognize that as a practical matter, under such a provision, every employer who wished to protect himself would need to check, verify, and document the status of all his employees. This presents a monumental investigative and recordkeeping task and raises many serious questions as to how best to go about it. Many citizens do not possess readily acceptable evidence of their citizenship.

If, as many members of the Commission seem to feel, sanctions against the employer should be based upon some existing form of documentation, the employer will be left to his imagination. Out of an abundance of caution, he can and probably would add a great deal of recordkeeping and documentation to his employment process. Even so, it will only afford him the limited protection of a rebuttable presumption that he has not violated the law.

In summary, Mr. Chairman, we are concerned that the employer not be placed between the rock of the Justice Department and the hard place of the Equal Employment Opportunity Commission. If sanctions are to be imposed on an employer for the knowing employment of undocumented aliens, we urge that Congress give him clear, simple, and objective procedures to follow in determining that an applicant is eligible or ineligible for employment. I realize that the Commission wrestled with many of these questions we have raised, but I perceive no clear cut answers in their report.

Thank you for the opportunity to express our concerns. I will be happy to try to answer any questions you may have.

Representative MAZZOLI. Certainly your statement is very helpful to us. Mr. Wright, you may proceed.

STATEMENT OF RICHARD W. WRIGHT, COUNSEL, SHERMAN & HOWARD, DENVER, FORMERLY PRESIDENT, MOUNTAIN STATES EMPLOYERS COUNCIL

Mr. WRIGHT. Mr. Chairman and members of the committees, I am pleased to have this opportunity to appear before you. My name is Richard W. Wright. I am from Denver, Colo., and I appear here as an individual and I speak for myself and not any organization or group.

Just so that you may know of the perspective from which I speak, I retired early this year after 35 years with the Mountain States Employers Council, a regional industrial relations organization with over 800 employers who do business in Colorado, Wyoming, and New Mexico. They are all different sizes and all different types.

During my time with that organization, most of the time as the chief executive officer and more recently as general counsel, I became familiar, I expect, with 2,000 or more employers and have spoken with thousands more employees and employers. And I think that I have a particularly good understanding of their concerns and problems as they may affect personnel and labor relations matters.

I also know that whenever the employer really understands the urgency of a situation, and even when they are just imposed with onerous regulations, that they seek in good faith to comply.

I think that we have a crisis in immigration policy and from what I have heard today we can really agree here that it's in shambles; that we have an ill-defined policy badly administered and poorly enforced; and that we must do something about it.

WORKERS' IDENTIFICATION SYSTEM

I have two suggestions. One has been covered broadly today, and that is the idea of a worker's identification card with employer sanctions, which has been spoken to by so many. I participated in the Denver hearing of the Select Commission a year ago and I was not in favor at that time when the question was raised as to whether or not there should be employer sanctions. I have come full circle as I have gotten more into the problem and as I have understood that this is really the only practical way that we can set about to control the flow of immigration into this country. We must have a simple worker identification card, or some kind of an identificaton system, the details of which I will leave to those more knowledgeable than I, upon which the employer may rely in granting employment to an alien, and in which the employer may be safeguarded from harassment and onerous regulations.

I would also say in connection with this area that I am quite concerned about the question of legalization or amnesty with one stroke of the pen. It has been said by Father Hesburgh, and by Congressman Lungren, who cited a study from San Diego, that many of these undocumented immigrants who come into this country will leave again shortly. I would like to see a period of time when we would see if this could not work itself out, because the theory of the identification card is that if there is not U.S. employment without a card then there will not be any great attraction to come here. And as these people return to their own country and realize that there isn't work, should they return, they may elect to stay home.

LIMIT ON TOTAL IMMIGRATION

The next point and the final point I would like to make is that I would like to see a definite ceiling upon the number of immigrants who come to this country. Now how that number may be divided as between refugees, as between different classes, I think must be discussed and reasoned out. But we should decide upon a figure, whether it is based upon the kinds of extrapolations that were given here today or in some other manner. And then if that figure is changed, it should be focussed upon by the Congress and be given the kind of attention and publicity and the responsibility fixed for the changing either upward or downward.

But without a firm budgeted figure forcing this kind of process upon us all, I think we will give way to special interests and not have a good situation.

Finally, before I got on the plane yesterday I met with a woman from Washington who was seeking to relocate in Denver, Colo., after 10 or 12 years of working for one of the departments here in Washington. After I had sought to give as much help in advising her as I could, I told her of my assignment today and she blanched and said, "You have a no-win position." I said: "What do you mean by a no-win position?" She said, "Well, you are beset with all kinds of special interests. You have all different kinds of religious groups. You have all different kinds of people and organizations—there is just no way to come out of it."

Well, I don't believe that this is a no-win situtation. I believe that we have a crisis. I believe from what I have heard today and from what I know of you people that you recognize that. I know people I talk with realize that there is a crisis, and I think this committee and the Congress will face up to it and get the job done.

I have known three generations of Senator Simpson's family. I came originally from Wyoming. And I am sure that there are a number of you of the same cut, cowboy or not, who will face up to these problems. Thank you very much.

[The prepared statement of Mr. Wright follows:]

PREPARED STATEMENT OF RICHARD W. WRIGHT

Mr. Chairman and members of the Subcommittees on Immigration and Refugee Policy, I am pleased to have this opportunity to testify today on the report of the Select Commission on Immigration. I am Richard W. Wright, 2900 First of Denver Plaza, 633 17th Street, Denver, Colorado 80202. I speak for myself, as an individual businessman, not for any organization or group. Let me tell you something about my past experience, to give you an idea of the perspective from which I speak.

During the period 1946 until early this year, I was associated with the Mountain States Employers Council, a regional employers association which serves as a central industrial relations, personnel, labor relations and research organization to more than 800 employers doing business in Colorado, Wyoming and New Mexico. This employer membership includes practically all sizes and types of business and industry, and in my capacity as President and more recently as General Counsel, I had occasion to become especially familiar with their problems, concerns and positions, particularly in the areas of personnel, labor and governmental regulation matters. I have also served as a corporate director of several businesses,including an international airline and a company with a number of plants located in Colorado, Nebraska,Washington State and California, producing a variety of clothing items. I retired from the Mountain States Employers Council early this year after 35 years of this experience in business and industry. Prior to that, I was a Special Agent of the F.B.I. I am now of Counsel to a law firm in Denver.

In my position as President of the Mountain States Employers Council, I have worked with perhaps 2000 businesses in the past 35 years. I have spoken with additional thousands of employers and employees. And I want to stress one thing to you as you consider what the "business" reaction to the report of the

Select Commission may be. Businessmen are citizens. We are concerned with the welfare of this nation. When there is a crisis confronting the United States, their first concern is always for the good of the United States.

We have been subjected to numerous regulations over these years and onerous as many of them have been and continue to be, there is always a good faith endeavor to comply in word and spirit. This is particularly so when there is an understanding of what the regulations are intended to accomplish in order to meet a national crisis.

I believe that the United States is in such a crisis today, a crisis of illegal immigration which is uncontrolled and a crisis of immigration laws which are in shambles. I think that the great majority of businessmen who are aware of this problem agree with me and are willing to accept those burdens necessary to get these crises under control.

I believe that the Select Commission on Immigration and Refugee Policy was correct in their conclusion that firm measures must be taken to bring immigration under control. I applaud their conclusion, and the deliberations which brought such diverse interests to accept this conclusion.

I believe that the overwhelming evidence that illegal immigration is against American interests has moved many of us to positions that we would not have taken even a year ago. I myself have changed my position on a vital issue. Last year, I testified before the Select Commission on Immigration and Refugee Policy in Denver, and I also participated in a Symposium sponsored by the Population Council. Both times when the question was raised, I opposed making it against the law to hire illegal immigrants. Both times, I said that I believed there were already too many employer sanctions with which business had to cope.

I said then that I did not think employers should be subject to the fear, the risk of being entrapped through the innocent hiring of an illegal immigrant; and I said that I did not think there should be an elaborate bureaucracy built to enforce such a law. Those were my objections then to an employer sanctions law. I still believe that they are valid problems that are of particular concern to businessmen, and I believe that they must be addressed by any employer sanctions law which is written.

But I no longer believe that the United States should not have an employer sanctions law. I have been convinced through my experience, my further reflection, conversations with business people and through the learning process which the Select Commission has been for all of us, that it is a vital and necessary part of immigration law reform to make employers liable for their knowing and willful employment of aliens who are in the United States against the law.

The objection which I raised on those earlier occasions are legitimate objections which, I have come to believe, are not insurmountable. These are difficulties which can and must be resolved. Under laws already existing, virtually all employers have been required to establish procedures to assure that employees are not discriminated against in their employment because of race, sex, age or religion. Also, employers are required to withhold money for income taxes, social security and other governmental purposes. In order to carry out these obligations, certain information and facts may or even must be obtained from the applicant for employment. A simple and uniform system of verification of citizenship status would impose no great additional burden on the legitimate employer who has these procedures for employment already in place. All that would be necessary is an identification card system which could be easily verified and which would provide safeguards for the employer who acts in good faith.

Indeed, compared to the complexity of other employment requirements, such a procedure would be relatively painless. Should such a system become effective this year, we could begin to establish a bona-fide standard of legality for employment. In time, it would become firmly established that only legally admitted aliens could expect to gain employment. The work incentive to enter illegally would be removed.

While I can speak only for myself, I believe from my experience that I can assure these Committees that a well-designed employer-sanctions law for which the urgent need is communicated, can and will be accepted by American businessmen. And more than that -- I believe that the great majority of American businessmen, who do not employ illegal immigrants and who have no wish to do so, will welcome not having any longer to compete with the unscrupulous few who hire illegal immigrants out of preference.

There is one issue not directly related to employer sanctions which I would like to mention to these Committees. That is the matter of a ceiling on legal immigration to the United States. When my friends, knowing of my interest in immigration, ask me what ceiling the Select Commission recommended for legal immigration, I have to say that I don't know. I don't know how many legal immigrants would be able to enter the United States under the recommendations of the Select Commission. There is one recommendation to increase the numbers of people who come to the United States in the quota categories, and yet another to take two groups of people currently covered by quotas out of those quota categories. There is then a third recommendation that close relatives of U.S. citizens and refugees not be covered by any effective ceiling.

Perhaps the Select Commission recommendation is not designed to be confusing, but I know that it is extremely so. I firmly believe that there must be a comprehensive ceiling on all our legal immigration. I understand that the Commission considered a ceiling on immigration, but rejected the concept on the grounds of flexibility. In today's climate, any argument made by a governmental agency or department to our Budget Director, David Stockman, that: "We can't have a ceiling on our expenditures -- we have to have flexibility," would not wash. It seems to me also that from the perspective of a businessman, immigration can and should be specifically budgeted, too. Only then will the processes work as they are intended.

Representative MAZZOLI. Thank you very much, Mr. Wright. The Senator has returned. You were just talked about very glowingly by the gentleman, Mr. Wright, who is a former Wyoming man.

Senator SIMPSON. I remember Mr. Wright.

Representative MAZZOLI. I'll start with 5 minutes while the Senator gets readjusted.

Let me mention with respect to what Mr. Wright said, I think the fact that you have seen this kind of turnout of our panel today, and the fact that we have, with the great help of the gentleman from Wyoming, this kind of a joint panel itself is an indication that we are dead serious about this, finally. It is going to be vexing, and, as I said earlier, politically perilous to everybody's health. The fact is that not to do something is even more politically perilous and more morally perilous, to talk as our friend Barney Frank might. So I think that we will definitely come to grips with this issue.

I will ask you gentlemen the same question, if I might. Assuming that we had a kind of card that Father outlined—for example—the social security card which is made counterfeit proof by implanting some tape, or by the use of a picture, or a thumbprint—how would you, and I will ask each one sequentially, envision this to be handled by the employer? Mr. Ellsworth, how would you envision the employer to handle it, and, specifically, what would happen if the INS came through and the individual did not have the card with him or her that was exhibited to the employer when the job was sought? How would you handle that?

Mr. ELLSWORTH. Let me see if I can take those in the order in which you gave them. First, agricultural employers, as I wrote in my full statement, need a system that is operable anyplace.

Representative MAZZOLI. In the field, for example.

Mr. ELLSWORTH. In the field, in an office, anyplace. Therefore, a magnetic card or a thumbprint is rather useless if you are out in the middle of 300 acres. So the picture would be the answer and would have to be as nearly as possible accurate.

Now there is a big question of what age a person gets that social security card, and I daresay if they had taken my picture the first time they gave me my card you would have trouble recognizing me today.

Second, I'll go back to the statement that has been made by others that the employer can only be a policeman to the extent that he views that card, that he sees it, and that he has followed that procedure. If you are going to impose paperwork on an employer beyond that which he normally needs for his payrolls, which may include taking that social security number from that card, if you are going to require him to check the authenticity of it some way, then I think we are back to where we would say this is not a workable situation for many of our employers.

If the INS came through and rounded them up, we would like to be in the position to say look, we did our best with this evidence that was presented to us at that time. The fact that a worker does not have that card now is something we should not be hung for.

Representative MAZZOLI. So the fact that the employer first viewed the card, then there would be no further evidence of that fact in some record? That would be just an averment that would be made by the employer to the INS people, for example?

Mr. ELLSWORTH. I suspect there has to be some proof some place of having seen the card, but what I would like to avoid is massive paperwork.

Representative MAZZOLI. Mr. Neville?

Mr. NEVILLE. I agree with what Mr. Ellsworth has said. I would like to add that it would seem to me to be a rather simple procedure for the employer in the application form or whatever record that he keeps to have a simple check made that he has seen the card and it is the card that belongs to this particular person, whatever means of identification there is.

Let's face it. We will have 250 million people carrying these cards, and a lot of them are going to change their appearance, as we all do with the passage of years, and a lot of them are going to lose their cards. So whatever system is envisaged will have to involve all of these considerations, the administrative considerations that will be involved in keeping people supplied if they are going to be subject to challenge at any particular time.

Representative MAZZOLI. Thank you. Mr. Wright?

Mr. WRIGHT. I was reading an article last night on fraud of credit cards, and it was pointed out that there were nearly 1 billion credit cards floating around this country of American Express, VISA, bank cards and so forth. If half of our population were employed, we would have 112 million, 117 million, and many people employed don't move around. It seems to me, compared to the credit card problem, a relatively simple kind of thing to be able to check through a computer, as American Express or VISA or some of these organizations do, on some kind of a basis to get this done.

I don't know too much about agricultural employers, but other classes of employers have been using all different kinds of screening procedures for a long time. They have to have a social security number and other data to process employment. I don't think it would be any particular burden for most employers.

Representative MAZZOLI. Thank you very much. My time has expired. Thank you, Mr. Chairman.

Senator SIMPSON. Mr. Ellsworth, do you have any figures to support the idea that foreign workers are more expensive when you consider all tax payments made on behalf of U.S. workers, when all that is taken into account? Where are your figures there? You make that assertion.

Mr. ELLSWORTH. I make the assertion by virtue of the present regulations which the Labor Department imposes upon those who use H-2 workers, and the cost of bringing H-2 workers to a jobsite, again under that regulation.

Now if we compare the cost that an agricultural employer experiences who hires his workers either through an advertisement of his own or as they come to the door, and has none of the requirements imposed on him by the Labor Department, then his costs are practically nil.

Under the Labor Department regulation, he would have to engage in recruiting of workers and checking with workers throughout the entire United States, wherever the Labor Department might find workers to be available. He might do this by phone; he might do it personally, but he will have to do it.

Second, there is the matter of transportation, and with the use of the present H-2 program, at least with the British West Indies central labor organization, and with U.S. workers, if an employer seeks certification for H-2's, he would be required to pay their transportation to his place of work and either to the next job or back home.

Users of H-2 workers at the present time have to post a bond and they have to provide free housing, they have to provide meals which are limited to a very maximum of $5 a day per worker, and all of these things add to costs, Senator, which the farmer who did not use those workers and used U.S. workers has no obligation to provide at all.

Senator SIMPSON. Mr. Wright, it is good to see you again. I remember our visit in Denver. I recall a question I asked you at that hearing. In response to a question of mine about employer sanctions, you had some very negative things to say about that, terrible things. You said very sincerely that it was unworkable and inhumane. And now I think you indicate that you have a different view of that.

Why have you changed your mind on that issue? I think it would be good if you could share with the subcommittees your change in thinking because it is something that came to pass with the members of the Select Commission also.

Mr. WRIGHT. Well, I have come to the foot of the cross, Senator, and for the reason that it is the only practical way to control, it seems to me, the illegal or undocumented alien. We surely can't do it by trying to man 6,000 miles of border. We can't do it through a tremendously enlarged immigration patrol. And from a very practical point of view, if all of us without exception carry some form of worker identification card, whether it is a new social security card or whatever it may be, and if employers may legally hire only legal persons, I think it takes away the incentive for aliens to come to the country.

And as I've thought about it, I remember I wrote Mr. Fuchs and asked him for the name of the professor who testified in favor of such a system who said that he was a member of the American Civil Liberties Union. I was appalled that he would suggest such a card, and Mr. Fuchs sent me this material and I realized that practically this was really the best way to go about it and didn't do violence to anyone.

As I told Mrs. Schroeder, you find yourself with a lot of strange friends and allies when you get into immigration and naturalization issues.

Representative SCHROEDER. When he said it to me, he said something about bedfellows. [Laughter.]

Mr. WRIGHT. I was talking about other people, Pat.

But that in essence, Senator, is why I have come around that way.

Senator SIMPSON. That is a similar type of thought process that occurred among the members of the Select Commission.

I might ask Mr. Neville, and I remember visiting with one of your colleagues when we were together on a panel, about employer sanctions. If a secure verification system were available, whatever we might reach through legislation, so that an employer trying to comply with the law was well protected, like a liquor dealer being well protected against losing his business, by virture of a job applicant simply presenting that card, would you then be supportive of the employer sanctions, or do you think you could sell that to your troops?

Mr. NEVILLE. I don't think we would have any problems selling it, Senator. Their principal and really sole concern is not to find themselves caught in a bind that they can't get out of, so that they are left with this really Hobson's choice of either discriminating in their employment practices or taking the big risk of hiring somebody and having the Justice Department say well, all the evidence that you collected really wasn't enough, or you did have some doubts about this person and you should have reacted to those doubts. Therefore you knowingly hired them.

Nearly all the businessmen I know are law-abiding citizens. If you set up a system for them to follow, they will follow it.

Senator SIMPSON. Thank you. I now recognize Congressman Fish.

Representative FISH. Thank you, Mr. Chairman. It is my sense that the panel, after listening to Father Hesburgh and understanding that the Commission is very well aware of the problems that you saw in the employer sanction and the responsibility laid on the employer, that really what we were saying in the Commission was that we would have a foolproof eligibility document that an employer could rely on, and that no more than a phone call into a computer bank would verify the fact that that was a legitimate document. I think that is very important to realize.

Now I am going to ask a couple of questions and anybody who wants to answer them may. They have to do with the H-2 workers. Would the enactment of an effectively enforced employer sanction program increase the demand of industry for H-2 workers? Mr. Ellsworth?

Mr. ELLSWORTH. Well, if I can start with that one, I think it would in agriculture. It will require a supplemental work force and some speedy procedure to get those workers. Now I can't say, Congressman, that that will happen every year, that it will be in any specific number. The only precise location I can say with some degree of certainty where it will happen is in the harvest of sugarcane in Florida where for years and years they have been unsuccessful by all methods in finding U.S. citizens to cut cane.

Representative FISH. Mr. Neville?

Mr. NEVILLE. We don't have many H-2 workers within our industry. We do have some in resort areas but it is a very small percentage.

Representative FISH. Can anybody answer this? What effect would the granting of legalization have on the future demand for H-2 workers?

Mr. ELLSWORTH. That will depend on whether my association's analysis of the situation is correct. If we grant amnesty to those who are currently working in agriculture as illegal or undocumented workers, and if those workers leave, as we figure a great number of them will, then we are going to have a labor shortage in agriculture, and many of those areas will be in places not necessarily in the South or on the east coast, but on the west coast and in the far Northwest. So I think we will have a shortage.

Representative FISH. Mr. Ellsworth, you indicated approval of the Commission's recommendation that the Department of Labor should improve the timeliness of decisionmaking regarding the admission of H-2 workers by streamlining the application process. In your written statement you suggest reducing the Department's lead time from the present 60 days to 30 days. Do you have any other suggestion?

Mr. ELLSWORTH. Yes, sir, in the present Immigration and Nationality Act there is a statement that the H-2 can be admitted if there are no other workers available in this country, and as I wrote in my statement, unemployed workers may be available in Texas, but not interested in going to Maine to pick apples in the fall.

We would like to see a change made in the act so it would be similar to that for the admission of permanent aliens. So that in the case of temporary workers, the act would say: "if there are no workers available at the time and place where needed."

Then second, we think that in place of the present regulations, where the Labor Department requires each and every grower to request the necessary number of H-2 workers to fill out a domestic labor shortfall, we would be ahead of the game if an association of workers could request a specified number, and that perhaps that association could get by requesting fewer because they could be shifted from employer to employer within that association, where they could have full-time employment under such a system, there would probably be fewer H-2 workers needed.

I think those are the big suggestions we would like to make, sir.

Representative FISH. Thank you very much.

Mr. Neville, in view of your understanding now of the Commission's proposal to truly protect the employer, to give him a basis on which to make a judgment if an employee is indeed eligible to work, what is your position on graduated penalty provisions under the employer sanction, culminating perhaps in criminal sanctions against employers who repeatedly violate the employer responsibility system?

Mr. NEVILLE. We wouldn't oppose that, Congressman. We wouldn't oppose such a system, as long as the ability to verify is there and he has a choice. We would never say that you can't increase the penalties for someone who persists in violating what is a perfectly clear law.

Representative FISH. Mr. Wright?

Mr. WRIGHT. Congressman Fish, if an employer can be shown to have knowingly breached the requirement of having a card and requiring identification, and if of course there are the kinds of appeal requirements, make the punishment fit the crime. And I think that that kind of employer is a very rare one, but that he should be dealt with accordingly if he has violated the law.

Representative FISH. Thank you, Mr. Chairman.

Senator SIMPSON. Thank you. I would now recognize Congresswoman Schroeder.

Representative SCHROEDER. I want to thank you all very much for being here and I do appreciate your statements. Of course I am especially partial to Mr. Wright. I hope the others do not mind.

I just wanted to say, what do you mean by easily verifiable? We are all tapdancing around that. Would it be something like a credit card where you phone in and doublecheck? Would you do that type of thing? Anybody can respond to that. What is it that we envision, because even the Commission didn't really get into what we should do.

Mr. ELLSWORTH. Visualize, if you will, an agricultural employer who uses day-haul workers. These are workers that may be brought by a day-haul operator from, let us say, Philadelphia to a farm in New Jersey, and they come, 30 or 40 of them at a time, to go to work on that farm. There may never be the same 30 or 40 any other day, but there is a need for 40 of them every day.

To get those names through a long-distance telephone line for confirmation of some sort causes some doubts in our minds, and if you have a situation where the foreman hires these workers in the field where there is no phone, pays them in the field at the end of the day and may not see those workers the next day, then he has to have some document, it seems to me, Mrs. Schroeder, that will be usable under such circumstances. It is just like the card I carry, retired from the Army, and it is a good card and it will do whatever it is required to do.

Representative SCHROEDER. I guess, Mr. Ellsworth, the thing that worries me about that as having seen "60 Minutes" and all that showing how easy it is to phonyup the card type of documentation and how people can go purchase those and there just may not be a way around it, I would think with the dayworker that you're talking about, isn't that fairly easy to remedy because wouldn't you be doing it through a subcontractor? Wouldn't the subcontractor be the one that you would be holding accountable?

Mr. ELLSWORTH. Well, it depends on how you wish to make the responsibility. Yes; it could be.

Representative SCHROEDER. I think that is the hardest thing that we have to deal with here. How you do it and how you do it so it works rather than you can run out and buy a card or phony it up because then you just have made it more cumbersome and the loophole is still there and the people who want to evade it still evade it. So I guess I think that is the biggest challenge.

Mr. ELLSWORTH. If we could have some system whereby at some time during that day, not necessarily at the time that worker was hired, a subsequent phone call could be made, it might work.

Representative SCHROEDER. What if you didn't have to pay them if you made the phone call and found out that they weren't there?

Mr. ELLSWORTH. I beg your pardon.

Representative SCHROEDER. If during the day you put the person on and you don't have to pay them if you find out that they don't have the right number?

Mr. ELLSWORTH. I am afraid we would have the entire Wage and Hour Division of the Department of Labor down the next morning.

Representative SCHROEDER. But if you had that as the law. I don't know. I am only trying to figure out what it is——

Mr. ELLSWORTH. I think they ought to be paid for the work they did but no more.

Representative SCHROEDER. And that's the end. You can't have them come another day. OK.

Representative MAZZOLI. Would the gentlelady yield just for a second? Is it possible that something could be drafted where the cards would be picked up at the beginning of the day, the foreman would have the opportunity to control those cards for the remainder of the work day, but as these individuals leave, and I assume they are paid on a daily basis in cash or something, the card must be returned at the end of the day, along with the cash payment? Then the individual, the foreman, or the business manager, would have the use of those cards; if they wanted to check, fine; if they didn't, it's up to them. I would assume that they would want to for purposes of protection against any INS bust.

Is that possible? Has that ever been thought of or is it just more paperwork and more problems?

Mr. ELLSWORTH. It is possible, sir. I don't know what the additional burden would be.

Representative MAZZOLI. Thank you. Thank you, Pat.

Representative SCHROEDER. Thank you. I have no further questions, Mr. Chairman. Thank you.

Senator SIMPSON. Thank you, Congresswoman Schroeder.

Now as we are alternating parties here, I now recognize Congressman Dan Lungren of California.

Representative LUNGREN. Thank you, Mr. Chairman.

I would just like to follow up on what Congresswoman Schroeder talked about. I think we ought to be very clear what we are talking about. I am not talking against employer sanctions under proper circumstances, but I don't think it is quite as easy as some of us may have suggested around this table today.

Having a counterfeit-proof card such as the one that the INS developed, which then we in Congress didn't give them enough money to follow through on, has one of those metal bands on the back that can be read, but in order to be effective you have to run it through a machine. So if you're at the border station and you have it you can run it through the machine and get a go or no-go as far as the reading is concerned. But I don't think we're going to suggest that every employer ought to buy one of those, but I do think we have to recognize that it's going to take more than just looking at that piece of paper because that does you no more good than having a social security card. Drivers licenses, you can buy them for slightly more than a social security card in California or just about anywhere. If you're high school age, and you're just below drinking age you know where to find it, and you can put your picture right on it and it looks very good.

So I think we have to really deal with what is going to be effective, and I think that all the more requires us to be very persistent in trying to find something that we can get agreement on. I think it would be pretty bad if we thought we had the agreement of industry and then all of a sudden we produce a card that really does nothing except impose a tremendous burden on industry and find out that you are fighting us on it.

I would like to talk about a subject that is usually pretty delicate, but I see in Mr. Ellsworth's statement there is some acknowledgement of the fact, and I would like to address it both to Mr. Ellsworth and to Mr. Neville and if Mr. Wright would like to comment, I would appreciate that.

On the question of the number of people who are here on undocumented status working in the agricultural industry and the restaurant industry. I am not a social scientist who has gone around taking measurements, but I have walked into restaurants and I have been in agricultural areas and I note that there is a large number. Mr. Ellsworth, you say it is less than 50 percent, but anything up to and including 49 percent is a rather large number.

If that be a fact, I would like to know what you feel the impact on your industries would be if we enacted the proposals of employer sanction, legalization and cutting off any type of guest-worker program except for a slightly streamlined H-2 worker program?

Mr. ELLSWORTH. May I ask you a question, not to sidestep it, but would your H-2 program be responsive to the demonstrated needs of employers with some checking, let us say, by the Labor Department or some other body?

Representative LUNGREN. Well, as I understand the recommendation of the Commission, it is for a slight increase in the H-2 program in terms of numbers, so there might be some streamlining but in terms of numbers it would only be a slight increase, and according to what you said about those who would then become legal, you would tend to think they would move out of the industry into other industries.

So what would we do with the shortfall of labor? Is it your feeling that that would be supplied by indigenous labor, by people who are here legally?

Mr. ELLSWORTH. We have instances at the present time in this country, sir, where we cannot find U.S. citizens who will fill the job orders, even when they are placed through the employment service. I may be proven wrong because I am dealing with an unknown, just as everybody else is in terms of the number——

Representative LUNGREN. It's call informed speculation, I think.

Mr. ELLSWORTH. If I were an undocumented farmworker and I suddenly had amnesty and were given a good card where I could go someplace and get year-round employment without having to do farmwork, I would be inclined to go, I think, and therefore it is my association's view, the members who have been discussing this very carefully, that there will be a rather large falloff in the number of farmworkers available to harvest crops in this country.

Representative LUNGREN. You see, I have no problem at all with unavailability of employees to those employers who have been unscrupulous, those who have taken advantage of the situation and paid people below minimum wage, put them in sweatshops. As far as I am concerned, we ought to throw the book at them.

But I am concerned about a conscientious employer who has felt that over the years he has not been able to get labor in his area except for those who are undocumented, and knowing that has hired them or not made an effort to determine if they are undocumented, and firmly believes that he is reliant on them. I just think that is one of the hard questions we are going to have to address here. And I recognize that there are groups here that oppose that because they think they're taking jobs away from Americans, and if that could be proven I would oppose it, too. The fact of the matter is, I think we have a large number of undocumented aliens.

Would you like to comment on that with respect to the restaurant industry?

Mr. **Neville**. Yes; I can't tell you how many undocumented aliens work in our industry. I don't know of any. But my experience tells me, when I go to restaurants myself, that there must be some.

Representative **Lungren**. Let me just tell you a story on that. A number of years ago the Commissioner of INS, General Chapman, went on a tour down in Texas and went to a Ramada Inn for dinner and they had a big welcome on the big signboard outside, "Welcome General Chapman, Commissioner of INS." He went to have dinner that day and the owner and the wife of the establishment came out and apologized for the fact that the service was slow but they were the only employees there that day.

The General supposedly turned to those employees of the Border Patrol who had invited him and said, "I appreciate the publicity but next time I'd like to have a meal so don't publicize the fact that I'm here." [Laughter.]

I just think we ought to recognize that. We just danced around that issue for such a long period of time, and pretended it didn't exist. I think we have to deal with it somehow.

Mr. **Neville**. We have, as you know, a great number of entry level jobs in our industry. And they are jobs that many times are difficult to fill. These people will fill them and fill them well. But I don't know the answer to your question, Congressman. I can't tell you how many there are. I know that there are employers who hire them but they don't hire them at any reduced rate or anything of that kind because these are all honest employers who keep records and pay the same wages and carry them through the same career ladder steps as everyone else. There is no law against their being employed at the present time except in some States, as you know. There are a few States that have adopted that.

Senator **Simpson**. Thank you. Congressman McCollum, please.

Representative **McCollum**. Thank you, Mr. Chairman.

I have a question for Mr. Ellsworth based on what I found intriguing in your testimony that you submitted to us. I don't think you have really covered it in your testimony up to this point.

On page 12 you comment, near the bottom of the page, this is about the H-2 program:

> The moment employers made their first move toward dropping their illegal work force in favor of using H-2 workers, the Department of Labor lowered the boom on them, making the process almost impossible for those growers. At times it even resulted in lawsuits.

What are you referring to?

Mr. **Ellsworth**. To be absolutely specific about it, there was an outfit in the Southwest that was engaged in citrus harvest, and they had had trouble getting workers to begin with. Second, they had had trouble keeping those workers because they would work for 2 or 3 days and then leave and the crop was not harvested.

So the following year the growers got together and said, "We will try to get H-2 workers to fill this gap because over the years we have never been able to get workers that will, No. 1, come in sufficient quantity, and No. 2, stay."

Whereupon, the Labor Department moved in, following its regulations, and really just made it impossible for those growers to get any H-2 workers. As a result, the crop was pretty well lost.

Representative McCollum. Has that been repeated other places or is this just one example?

Mr. Ellsworth. Yes, sir, there have been other examples. I can't give you names of individuals or an individual grower, but the same thing was tried in western Colorado for apple harvest, and there were some cherry growers that tried it in Utah, and in each case they found that as individuals the rules and regulations imposed on them were so great that they couldn't surmount them.

Representative McCollum. You have given what I think, in the testimony you have presented to us today, a very convincing presentation and argument with regard to the difficulties that actually exist for use of H-2 workers. The opposite is actually true as far as incentives or disincentives and what may be indicated in the Select Commission's report.

I am curious about what is missing from this, and that is what recommendations or suggestions you might have for us to improve the H-2 program. I assume maybe you would do away with all these things that you complain of in here as making it more difficult, but I am sure that actually there must be some one or two or three items that you would particularly think are burdensome on your industry and that might be of importance to other industries besides agriculture to change in the H-2 program. Could you tell us your thoughts on that?

Mr. Ellsworth. Well, the one thing that I had mentioned in my statement was that at the present time the Labor Department requires a job order to be filed with the employment service and that the employment service have that job in its interstate clearance system for 60 days. We think that is an inordinate period of time when the employment service now has its computer set-ups and its job banks where it can find workers more quickly.

Second, we feel that the requirement that the Secretary of Labor has to certify that there are no workers available in the United States is a tremendous burden to overcome. Where an employment office in Texas will call the employment office in Virginia and say, "Yes, we have 12 workers down here that are unemployed," and say they might be available and then the Virginia employer has to contact them only to find out that they are really not interested in coming up to pick apples when the weather turns cold, becomes a bit of an exercise in futility.

Then, the other one is that over a period of time, job orders have become so voluminous with all of the requirements, all of the details, all of the this and all of the that, we say look, if you can hire U.S. workers under these circumstances, but there are no U.S. workers to be hired, then gentlemen, let us hire temporary foreign workers to come in, do the job, finish the job and go back home. We'll pay them the same price we would pay U.S. workers, not a penny less, and have them save our crops. For many of the growers, citrus and sugar cane and other crops, a whole year's investment is involved in getting that one crop out.

Representative McCollum. Well, I am very familiar with that, being from Florida. We see the sugar cane and the citrus and everything in my district.

I would like to follow up on the lines of suggestion you might be able to give us. You know, we have had some problems in the Immigration and Naturalization Service inspections of businesses, and this would apply to the whole panel really, because it is considered to be disruptive and there are lawsuits, as I understand, out in California where we visited recently. They can't go in, in many cases, because of these suits in many cases.

Can you suggest how we can improve on that and perhaps draft a law that would be more palatable and allow some of these inspections that have to take place in the future to take place? I would like to ask that of the whole panel, if we have the time to answer it.

Mr. Ellsworth. In the interest of time I would like to pass and suggest that I answer that question for you in writing after we give it some more thought.

Representative McCollum. Fine. I would appreciate it.

[The following response was subsequently submitted by Mr. Ellsworth:]

> At the present time the laws of this land result in an anomaly. Employers (with the exception of farm labor contractors) are not prohibited from hiring undocumented aliens. On the other hand, the Immigration and Naturalization Service is charged with seeking out and deporting persons who have entered this country illegally.
>
> As a result, there have been frequent "raids" by the Border Patrol which have proven highly disruptive, especially at the height of agricultural harvest operations. One cannot fault the Border Patrol for carrying out its duty, even though the modus operandi during such raids may prove highly disruptive.
>
> Were the Congress to enact employer sanctions, the great majority of agricultural employers would abide by the law. Under such circumstances, the Border Patrol could, through cooperation with employers, check time cards or other records and "weed out" the worker with a forged document.
>
> In its written statement, NCAE expressed serious concerns over a "shortfall" of U.S. workers and emphasized the need for a responsive temporary (H-2) worker program. Were employer sanctions in place, any H-2 workers admitted would be known to the Immigration and Naturalization Service which would have issued the needed temporary visas. Any Border Patrol activity could then be directed, not against a whole work force, but against those illegal workers discovered by periodic checks of employer's records.
>
> This is merely a suggested solution—a possible abatement of the problem. While NCAE has no position for or against employer sanctions, as long as the laws of the land remain as they are, the "conflict" between employers and the Border Patrol will continue.

Mr. Wright. Mr. McCollum, I have no knowledge of the agricultural business, but I think that employers with whom I am familiar have been operating under different kind of regulations and restrictions for a long period of time, starting out in about 1938 with the Fair Labor Standards Act and various equal employment statutes and wage and hour statutes that have been passed since then.

There is a high degree of sophistication in some of these agencies. The Wage and Hour Division, for example, started in 1938 and has achieved a good deal of maturity.

For those employers covered by the Federal Fair Labor Standards Act, perhaps it is an organization who could administer or enforce this kind of a provision. I would hope we could avoid any great new organization or establishment and that it could be added to what we already have.

Representative McCollum. I know my time has expired but I would appreciate it and I think the whole panel would if each of you would submit to us in writing some constructive suggestions about how it might be improved. Right now the burden is really on the Immigration and Naturalization Service as a law enforcement agency, as I understand it, although obviously Labor gets in it and you're right, it's confusing and I think it is a great burden, but we have to do it and I think all of us would probably agree that we have to reshape that law.

I know my time has expired.

Senator Simpson. That was a very important question and I was going to allow the time to go on so that you might respond, Mr. Neville, but if you are going to do that in writing, I think that is most appropriate.

That is what we are up to. We are just going to be culling the United States of America for suggestions. It is just like the issue of the three-legged stool which is employer sanctions, increased enforcement and some kind of identification system. If we get one without the other two or if we get two without the other one, we have nothing. Yet we will pretend we will and then ~~we~~ will be right back where we were before. It is a tough, tough issue and we realize it, but we are ready to plow ahead and all the political ramification of it that are so very, very real, and we will be searching throughout this country.

I always say to people as they say you can't do that, I say OK, give me what we can do but no fair quoting what it says on the Statue of Liberty. Then they get mad because it is easy to fly into it from that launchpad.

Enough. Thank you very much. We appreciate your coming here and I hope you will continue to communicate with the staff of Congressman Mazzoli and my staff and continue to feed us information that is so important.

Representative Mazzoli. Thank you very much, gentlemen.

Senator Simpson. The final witness in today's hearing will be Mr. Thomas Donahue, secretary-treasurer of the AFL–CIO. Mr. Donahue, please proceed, and thank you for your patience. We appreciate having you and I am going to give you 10 minutes instead of 8.

STATEMENT OF THOMAS DONAHUE, SECRETARY-TREASURER, AFL–CIO, ACCOMPANIED BY RAY DENISON, DIRECTOR, DEPARTMENT OF LEGISLATION, AND MARKLEY ROBERTS, ECONOMIST

Mr. Donahue. Senator and gentlemen, I am Thomas R. Donahue, secretary-treasurer of the AFL–CIO and I am accompanied by Ray Denison on my left, the director of our department of legislation, and on my right by Mark Roberts of our economics staff.

I appreciate the opportunity to appear and present the views of the AFL–CIO, which has a long interest and a proud and consistent record on both refugee and general immigration matters, and has long expressed its concerns in both areas.

We have always heralded America as the land of immigrants and surely our labor movement is a movement begun by immigrants and peopled today by the children and grandchildren of those immigrants.

We have argued for sensible and fair immigration policies, and at the same time we have for well over 20 years expressed our serious concerns about the adverse effects of bracero programs and of illegal immigration on U.S. workers and their jobs.

Similarly, we have always staunchly insisted that America must remain a Nation of refuge for those who flee persecution. We were in the forefront of those who joined in the late 1930's to assist the victims of the Nazis and we worked hard to assist in the resettlement of the refugees of Eastern Europe after World War II, and in more recent years we have expended similar efforts to assist the Hungarians and other East Europeans, Cubans, Haitians, Indo-Chinese, the Somalis, and the many others who have been forced into the refugee world.

At the same time, we have pressed through our trade union channels and have supported various administration efforts to press other nations to accept a more fair share of the burden of refugee resettlement.

Against that background we are pleased to have the opportunity to appear here today and to urge your consideration and your prompt disposition of the issues raised in the final report and recommendations of the Select Commission on Immigration and Refugee Policy.

As an Assistant Secretary of Labor for Labor-Management Relations in the Johnson administration, I was involved in efforts in 1967 and 1968 to deal with the problems of illegal immigration. Fourteen years later we are still wrestling with the same problems, and the problems have grown immensely more serious in those intervening years.

We have all been involved in an analysis of the illegal alien issue for many, many years, and in an analysis of refugee and immigration matters for at least the past few years, and it is past time for the Congress to act.

We support a humane and compassionate U.S. immigration policy, while taking a realistic view of job opportunities and of the needs of U.S. workers. Illegal immigration is of particular concern to us because it endangers the jobs and the labor standards of U.S. workers.

In analyzing the report of the Select Commission, we find ourselves in agreement on most matters, and specifically we support the committee's recommendations for penalties for employers who hire illegal aliens in the form of civil and criminal sanctions, an identification system for work purposes, stronger border controls and interior enforcement, and much more support for the Immigration and Naturalization Service, better enforcement of labor standards and antidiscrimination laws generally and specifically the enforcement of those laws in areas and in industries where significant numbers of illegal aliens are employed, with speedy prosecution and stiff fines against repeated violators.

We support the Commission's recommendation for ending the dependence of this Nation on temporary workers, opposing foreign labor import programs which undercut U.S. wages and working conditions, and requiring employers to pay social security and unemployment insurance for H-2 workers.

We support continuing and improving enforcement of the labor certification process to protect U.S. workers, and we would specifically support many of the changes recommended by former Secretary Marshall in his addition to the Commission's report.

We commend specifically the recommendations of the Commission for regularizing the status of illegal aliens with demonstrated attachment to the community, with compassion for the families involved, after the massive inflow of illegal aliens has been stopped.

We believe that U.S. immigration policy should foster the reunification of families and we support the continued acceptance of refugees from political persecution, and we urge increased efforts to share responsibilities for those refugees with other nations.

We support with some qualifications economic development in nations sending illegal aliens to the United States, but we note, along with the authors of the report, that that development is not a shortrun solution to our problems.

Finally, we believe that the Commission recommendation to increase legal immigration by 65 percent is premature and unwise in the current economic conditions, in light of our need to absorb the full effects of at least a decade of large scale legal and illegal immigration.

That would conclude, Mr. Chairman, our oral presentation. I would be happy to discuss any of those matters further and I would be happy to try to answer any of your questions.

Senator SIMPSON. Thank you very much. That was very helpful.

Your organization, Mr. Donahue, has come out in opposition to any proposals for any expansion of the current H-2 program, and I remember working in a most vigorous way with Jack Otero, who was on the Select Commission and had some strong feelings in that area. And yet you endorse the Commission's proposal for employer sanctions.

Historically, I guess, we have learned that it is just impossible to gain control over illegal immigration without the cooperation of employers. It just isn't going to work, and that is the way it is.

And the various employer groups, and you heard some of that today, have stated they will go along with sanctions, provided they will have access—part of it being access to a temporary worker program to fill labor needs which were not met by American workers.

In the view of your organization, would not a controlled expansion of the H-2 program represent much less of a threat to your membership than a continued uncontrolled influx of illegal workers who have proven difficult to become involved in any formal labor process or labor organization movement.

Mr. DONAHUE. I'm afraid, Senator, you offer me a Hobson's choice, expanding H-2 or maintaining illegal immigration. I suggest that I don't think we have to do either of those things. The H-2 program, while we would surely be critical of pieces of it, has worked reasonably well for all sides. There were 36,000 people admitted to this country this year. That, apparently, was the number for which there was a demonstated need. It is my understanding that about half of those were in the agricultural field.

I have heard a number of comments about sugar cane cutters and so forth. Those are all H-2 workers who have been admitted year after year to cut cane in Florida and Louisiana.

We are in a situation in which there are 7,800,000 American workers unemployed, with the high unemployment figures you have heard testimony of among our young workers. Those are people who take low paid and unskilled jobs. We think that first we ought to try to see if there can't be a shift of those unemployed into gainful employment before we talk about expanding the H-2 program or going into any sort of enlarged bracero programs.

Senator SIMPSON. You say enlarged bracero program. Now I came from an area of the Nation where the bracero program was used and the very term is offensive to the Hispanic people, the term "bracero." That is why we use terms like guest workers and temporary workers and so on.

You don't have any wish to return to the former aspects of the old bracero program, do you?

Mr. DONAHUE. None whatsoever, Senator. We have worked very hard for all the years leading up to 1962 to insure the repeal of Public Law 78, to insure that that program could come to an end.

Senator SIMPSON. I think that is shared by many. We don't want to return to that.

If the United States is faced with having to enforce an overall cap on legal immigration, what would be your organization's position on how those numbers might be distributed among categories of family reunification or needed labor skills or refugees? What is your thought there?

Mr. DONAHUE. Senator, we have supported the basic thrust of family reunification as the first priority, and I suppose that puts us in general accord with a system of preferences. The AFL-CIO has not specifically addressed the question of independent immigration beyond those preferences, or an absolute numerical cap.

On the refugee side of the equation, I think we have to accept the unfortunate fact that there is likely to be a continuing need for this Nation and others to absorb refugees from persecution or tyranny somewhere in the world, and they will add another element to the inflow of legal immigrants to this country.

I think the current legal immigration level of 270,000, plus the acceptable inflow of refugees as necessary to this country, would provide probably a tolerable limit for immigration. We have not addressed specifically whether or not you should establish an absolute cap on those two numbers and refuse persons above that.

Senator SIMPSON. Could you elaborate on your organization's position on the Commission recommendations on employer sanctions based upon this secure form of identification? What system of identification would be more acceptable to American workers in your opinion? And I am not laying that as a snare. I am really wondering what your organization would see because you have favored an ID system. What would that be?

Mr. DONAHUE. Beginning some years ago, Senator, we argued very strongly for the acceptance of a noncounterfeitable social security card, since that was advanced in the mid-1970's, I guess, as the standard identifier which could be most easily accomplished and could be put into place most quickly.

We really think there are only two elements that would have to govern use of any sort of standard identifier, and we addressed those issues in our testimony, as saying there is a requirement that nobody entitled under the law be denied such a document, and that once a document is issued, it cannot be revoked if it had been issued according to law in the first place.

In terms of which of the various technologies we think most acceptable, I would think that either the noncounterfeitable social security number or some sort of data bank system, as Secretary Marshall has suggested, would be an acceptable way of providing an employer with a certain amount of security that the person he is hiring is entitled to be in this country and be employed, and would provide a workable system. Beyond that, we really don't have any specific choice as to the type of technology.

Senator SIMPSON. Chairman Mazzoli.

Representative MAZZOLI. Thank you, Mr. Chairman.

Thank you very much, Mr. Donahue. Let me commend you on your statement. I think having that executive summary attached to the statement itself enables people like me, with about a 13-second attention span, to be able to get something out of what you said. I really thank you for it.

We have heard some very interesting word combinations. My friend from Wyoming is noted as one of the more quotable people on the Hill. We have had "guesstimates," and I go back to my favorite, "xenophobic demagoguery," "heroic estimates." Let's maybe stick with heroic estimates.

I wonder if the AFL-CIO has done any heroic estimate, which I gather is a euphemism for any kind of numbers we can summon up, of the impact of illegal aliens on unemployment rates. We hear this swarm of illegals is all over the place, denying Americans jobs and forcing Americans onto the streets.

Has the AFL done any heroic estimate, and if not, can they be done and could you supply us with the next best appraisal?

Mr. DONAHUE. Mr. Mazzoli, we have generally been fearless and willing to wade in with all sorts of estimates. We don't in fact have an estimate that I could offer you, beyond our general acceptance of the Commission's estimate of 3.5 to 6 million, and if anything we would tend to think they are on the side of caution and that other reasonable estimates of the number are higher.

In terms of displacement, I would argue to you that there is an absolute substitution, one for one, that in this Nation, before we had illegal aliens and before we had any substantial number of braceros in the 1950's, the dishes were washed and the beds were made and the crops were picked. The crops were picked to a much greater extent manually than they are today. And they were picked by American workers.

With the kind of unemployment statistics that we have, I would argue to you that there is a substitution of one for one and that if we didn't have 2 or 3 or 4 million illegal workers in this country, then we would reduce our unemployment statistics by that number.

Representative **Mazzoli.** The gentleman at the end of the table and I took a very interesting trip to California 2 weeks ago, which brought us all the way from the border at San Ysidro up to Los Angeles. In the course of at least two different conversations I had people who I think were reputable and believable people saying that it is impossible to find an American who will take a job as a domestic. It is impossible for several reasons, not the least of which is class distinctions. It is demeaning to take a job as a domestic, and an American doesn't want to demean himself or herself.

Yet do you feel then, sir, that there is a one for one displacement, and that a domestic who comes from Haiti and Santo Domingo is indeed displacing an American at that job?

Mr. **Donahue.** Yes.

Representative **Mazzoli.** You really do?

Mr. **Donahue.** Yes; I do.

Representative **Mazzoli.** That is interesting. More heroic estimates or is there anything to back that up?

Mr. **Donahue.** With one qualification, which I should have offered, and that is that the rate paid for the job is sufficient to draw forth labor. I mean what we are hearing more and more in this country is the need to allow the free play of market forces. Market forces will provide workers when the reward is high enough.

Representative **Mazzoli.** Well do you think, for instance, if you were to pay $7 an hour for an 8-hour day, that there would be no problem in getting domestic help in Washington, D.C., right now? That is a speculative question, but it was intriguing when I talked to these two different people, two different cities in California, two different backgrounds, and they both said the same thing. We were, of course, faced with this question of just what happens. Do the illegals really take our jobs, or are they doing things that Americans either cannot do, for lack of skill, which is highly unlikely, or don't want to do, either because it is stoop labor, or is, historically, the kind of work that blacks did and they don't want to do anymore because it is not an upwardly mobile job?

I was intrigued by this sort of discussion. Anything that you have downtown on that I would be interested to have because I think that is a very big point in talking about H-2 programs. I think the Congress has to be convinced that, indeed, H-2 workers and illegals are displacing Americans. Otherwise there is the answer that if you go to sanctions, you may cause a lot of headaches within an industry or several industries.

Mr. **Donahue.** I can only offer you the comment that at $280 a week in a city in which the prevailing wage is paid in many occupations, I would have to believe that you could get all the domestics you want in Washington, D.C., at $280 a week, $7 an hour, 8 hours a day.

I come from New York City. I come out of what used to be referred to as the Elevator Operators and Porters Union in New York City. The porter's job is a particularly unattractive one. It is dirty. It is very low prestige and it is a job where traditionally the latest immigration wave has gone into that employment.

In those jobs, in New York City, the janitorial force is organized about 95 percent and the jobs pay about a minimum of $270 a week. There is no shortage of people who are willing to take those demeaning occupations and fill those demeaning jobs. No shortage whatsoever. There are people lining up every day.

Representative **Mazzoli**. I am not so sure that janitorial work is quite like domestic work and stoop labor. I shouldn't use that term "stoop labor," but hard, bend-over kind of work in the fields where you have the Sun above and you have the problems that entails.

Just for a very quick example, before my own time expires, before my father's death—he was himself an immigrant—he was a tilesetter and did terrazo, which we have throughout the Capitol. Toward the end of his experience he had a terrible time trying to find Americans who are willing to kneel down in what Daddy used to call mud, which is just the concrete and the terrazo chips, because it is tough work, as I well know myself. It is hard work, and it produced backaches and arthritis and everything else. He just couldn't find Americans to do it toward the end. And it became, as we all know now, virtually a dying craft.

Anyway, I just suggest that we might want to try to follow up on that.

Mr. Chairman, thank you for the time.

Senator **Simpson**. Congressman Lungren.

Representative **Lungren**. Thank you, Mr. Chairman.

Mr. Donahue, I appreciate your appearing before our combined panels here. I think it is commendable that the AFL-CIO has this interest. We have been trying to raise the flag on this issue for some time and now we are finally doing it. Sometimes I wonder if I wanted to raise the flag because of some of the flak I get on this.

I am happy to say I agree with a majority of the points here, but obviously we have a little bit of a disagreement on the question of temporary workers. And let me just pose this question to you.

You said that the H-2 program had what was it, 36,000?

Mr. **Donahue**. That is my understanding, 36,000 people last year.

Representative **Lungren**. But isn't it true that that is in the context of having a large number of undocumented workers who are working in the job force today?

Mr. **Donahue**. I assume that is the case.

Representative **Lungren**. We're talking numbers here and we are all talking about going from 250,000 or 275,000 to 350,000. The fact of the matter is legally last year we had admitted to this country 788,000 people, when you go through all the preferences, when you go through the immediate relatives, when you go through the refugees, when you go through the people that are entrants here pending status; 788,000 people. We apprehended somewhere between 800,000 and 1 million people last year, and if you go on the border the frank statement you will get is that for every one apprehension they make, two to three get across. Official is one, but two to three and some say four. So you're talking about a large number or people. Now obviously it may be the same person in some instances.

So you are talking about literally millions of people in that system, and my question is what can you tell us, what can you show us in terms of real hard facts to suggest that every one of those millions out there or several millions out there taking a job is taking a job from an American worker who is willing and available to do that job? Because otherwise we just have here a clash of opinions and we are never going to get anyplace. Some people say they don't take jobs and other people say they do take jobs, and nobody has any hard data. And maybe we can't get that hard data.

But is there anything, any research that you have at the AFL-CIO that could give us a glimmer of light on this subject?

Mr. DONAHUE. I don't think there is any research which could show you statistically or empirically that job opportunities which don't exist would be filled by people if they were there, and that is really what you are asking us for.

I submit to you that our experience is that in the past all of these jobs were performed, before there were illegal aliens. The restaurants in Washington were fully staffed by people. The motel where General Chapman went was staffed by people years ago, I am sure. It functioned. The jobs were filled.

So there is empirical evidence that prior to the arrival of illegal aliens, people were working in those occupations. I submit that that would continue to be the case in the future.

I don't think that you can go from that question of whether or not there is substitution to say that there isn't. I mean you are coming to the opposite conclusion that there is not substitution and therefore, before we do anything about the illegal alien problem, we ought to bring in more people under an H-2 program, or provide for their entry under an H-2 or some other program.

Representative LUNGREN. No, I didn't say before we did. I said concurrently. At least that is my idea.

Mr. DONAHUE. Well, I think if you were willing to act on this legislation and monitor the various industries that would be principally affected by it over a 2- or 3-year period, then you would have evidence of one kind or another. And I submit to you that the damage to those industries would be far less than the damage that has been done to this Nation and to the workers of the Nation by allowing the illegal alien problem to go on this long.

Representative LUNGREN. I will agree with you very, very much about the impact of allowing something that is sub rosa in terms of legality. It creates all sorts of inappropriate circumstances in our society, people victimized unscrupulous employers taking advantage of employees and competitors.

But you know we sometimes fall into a semantic difficulty here. We say we didn't have these problems before we had the illegals. Frankly, we have had a labor movement from Mexico and it has been illegal or legal, depending on whether we had a law that they fell under, and there is no substantial evidence I have been able to find to suggest that the fact that we, for instance, quit the bracero program, stopped the same movement of labor we had with the bracero program.

So I think you can make the argument that we had this movement of labor even in those times when we had very little unemployment. Some people would also argue that we have had increases in unemployment since we have created a social welfare network. I don't want to argue that point. I am just saying people could as easily suggest that.

I think the point Mr. Mazzoli made was stretched a slight bit by suggesting that we wouldn't be able to find workers at $7 an hour.

I think maybe the question is paying them a minimum wage, which is the legally established minimum wage for someone for 8 hours of work in a family, you would find available American workers. Paying above that I would suggest that most American families wouldn't be able to afford it. There are not very many American families that can afford somewhere between $900 and $1,000 a month to assist them, at the same time that you have both members of the family out there working.

Mr. DONAHUE. But the extension of that is that since American families couldn't afford to hire domestics for more than the minimum wage, then we ought to legislate the fact that the minimum wage is the rate for domestic workers, and if there aren't domestics available at the minimum wage, then we should be allowed to import them. And that is not what the minimum wage is for. We have a free market which sets wages.

Representative LUNGREN. If those jobs don't exist now, how are you taking jobs away from American workers if those jobs are gaged at a level at which foreign workers will fill them? If they don't exist in the American market, how are they taking jobs away from American workers, if you create a situation where foreign workers will provide them at say the minimum wage?

Mr. DONAHUE. I don't know what jobs——

Representative LUNGREN. Domestic jobs. That is just the example that we came up with. That is the reason I am pursuing it.

Mr. DONAHUE. But they do exist and they are being filled. I really would urge you not to get hung up on the need to provide cheap labor to American employers as a reason for stumbling over the need to close down illegal immigration.

Representative LUNGREN. No, no, I agree with that and I am just suggesting that try as much as we can, we are not going to totally cut off the flow, given the experience we have with Mexico, and rather than pretend we are, and rather than to say illegal workers will not seek work here, I think it would be better to allow some safety valve that we have some control over, and have the participation of labor and management in the Government of this country and Mexico, to try to put some constraints on it.

Senator SIMPSON. I certainly would I think speak for every member of both—I won't speak for them but my hunch is that we all feel that the issue has nothing to do with cheap labor or trying to provide it in America. This just isn't even part of our huge mission. It is something we will address from time to time, but it is something the Select Commission didn't even address, so help us by not diverting us into that emotional stream. That doesn't have anything to do with what we are up to. We are up to numbers, and what are we going to do and how are we going to do it, in a system out of control.

Congressman McCollum, excuse me.

Representative MCCOLLUM. Thank you. That is perfectly all right. Your comments were well made.

I am interested in an area that I did not see covered in your testimony up to this point, as far as the AFL-CIO opinions are concerned. In the Select Commission report, there is no total cap on immigrants coming into this country. There is in fact a cap of sorts, but we have several exclusions, exceptions, whatever to that, and based on the projections that were presented to us today, there would be a substantial number of folks who could come in in unlimited quantities or numbers. The census figures, the GAO figures and everybody else's are just speculation and guesses or best guesses, so it could be quite a substantial number, especially over a long period of time.

Does the AFL-CIO have an opinion or a view on whether or not we should have total cap, perhaps larger or perhaps different than the one that is suggested by the Select Commission, on the total number of immigrants, refugees, spouses, children, and so on admitted to this country each year?

Mr. DONAHUE. No, we do not. I think that if anything, we would argue that the Nation, in the operation of all those programs, would have to be conscious of the problems of Americans, American jobs, and the problems of employment in this country as that might be affected by massive inflows of others from other countries. But we have argued instead for maintaining some flexibility in the system, and we have argued that it is simply, in our judgment, probably not possible to work with an absolute cap in the face of the unknown refugee questions of the years ahead.

We would not have anticipated the massive flow of Indochinese refugees a few years before that event. If you had a cap, we might not have been able to resettle as many of those people as we have been able to resettle. The same obviously would have been true with the Cubans and so forth.

So we have argued rather for a more flexible approach to it, but we really haven't addressed the question of should there ever be a maximum cap.

Representative MCCOLLUM. Thank you. I noted in looking at the testimony that was given earlier by Mr. Ellsworth, an agricultural employer, and also looking at the record of the Select Commission's recommendations and your support, one item stands out to me that needs to be addressed. That concerns H-2 employees and employers and the recommended requirement that employers pay social security and unemployment insurance for H-2 workers. You support that, according to the record.

Mr. DONAHUE. Yes, sir.

Representative MCCOLLUM. In Mr. Ellsworth's testimony, I don't recall his discussing it orally with us, but his written testimony says,

> Furthermore, it seems totally inconsistent with the intent of both the unemployment insurance and social security programs to require payment into the funds on behalf of persons who will not be able to benefit from them. H-2 workers are temporary workers. They may never return to this country a second time. They are not citizens.

In other words, they are not going to get anything out of it. It is never going to accrue to their benefit, which of course is the purpose of both of those programs.

I don't know the reading, and we didn't ask that of the Select Commission as far as Father Hesburgh was concerned, but why do you support this particular requirement on employers in light of the comments that Mr. Ellsworth made with respect to the fact that they aren't going to get a benefit from this, the employees?

Mr. DONAHUE. We support the imposition of those costs because the imposition of those costs would remove the disincentives to employ American workers. It is perfectly true, as Mr. Ellsworth said, that in importing Jamaicans to cut cane in Florida, the employer who brings in H-2 workers for that is paying some substantial transportation costs. That is not true of the Arizona employer or the southern California employer who has Mexicans just across the border coming to him.

The difficulty I find with the gentleman's comments is that the entire theory of any insurance system is that everybody contributes to it in some fashion or other, and not everyone is going to collect from it. The reason you can have an unemployment insurance system in this country is that many people will never avail themselves of it, never have need of the insurance that is offered, and therefore it can be offered at a certain rate.

In buying automobile insurance, I think each one of us hopes that we are going to pay in for something we will never need. The theory of unemployment insurance is of a creation of a fund from which the needy will benefit as a matter of right, but it was never predicated on the assumption that everybody who paid into it would get some benefit out.

Representative **McCollum**. I agree but it certainly was predicated on the assumption that everybody who paid into it would be paying into it for a risk assumption, and they would receive some protection from it for the risk that they otherwise might have, and these employees have no protection. They have no risk. They are not protected.

So what I gather from what you are saying is that this is strictly a deterrent, from your viewpoint, a way to help force people in this country not to hire H-2 employees. It is just another added restriction on them, is that correct?

Mr. **Donahue**. I wouldn't accept the word "force," but it removes the disincentive to hire U.S. workers.

Representative **McCollum**. I have no further questions. Thank you.

[The prepared statement of Mr. Donahue follows:]

SUMMARY
OF
STATEMENT OF THOMAS R. DONAHUE, SECRETARY-TREASURER, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, TO THE SENATE SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY AND THE HOUSE SUBCOMMITTEE ON IMMIGRATION AND REFUGEES AND INTERNATIONAL LAW IN JOINT HEARINGS ON THE REPORT OF THE SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY

May 5, 1981

The AFL-CIO supports a humane and compassionate U.S. immigration policy while taking a realistic view of job opportunities and needs of U.S. workers. Illegal immigration endangers jobs and labor standards of U.S. workers. The AFL-CIO supports:

1. Penalties for employers who hire illegal aliens.

2. An identification system for work purposes.

3. Stronger border controls and interior enforcement, more support for the Immigration and Naturalization Service.

4. Better enforcement of labor standards and anti-discrimination laws.

5. Ending dependence on temporary workers, opposing foreign labor import programs which undercut U.S. wages and working conditions, requiring employers to pay Social Security and unemployment insurance for H-2 workers.

6. Continuing and improving enforcement of the labor certification process to protect U.S. workers.

7. Regularizing the status of illegal aliens with demonstrated attachment to the community, with compassion for families involved.

8. Immigration policy fostering reunification of families.

9. Continued acceptance of refugees from political persecution and shared responsibilities for refugees with other nations.

10. Economic development in nations sending illegal aliens to U.S.A.

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STATEMENT BY THOMAS R. DONAHUE, SECRETARY-TREASURER, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, TO THE SENATE SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY AND THE HOUSE SUBCOMMITTEE ON IMMIGRATION AND REFUGEES AND INTERNATIONAL LAW IN JOINT HEARINGS ON THE REPORT OF THE SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY

May 5, 1981

On behalf of the AFL-CIO, I welcome this opportunity to set forth our views and the principles which guide our thinking about immigration and refugee policy.

The AFL-CIO supports the concept of coordinated, integrated immigration policy. Piecemeal, haphazard programs undercut effective administration and proper evaluation of social, economic and international concerns. Therefore we welcome the opportunity for constructive action presented to the Congress by the final report and recommendations of the Select Commission on Immigration and Refugee Policy.

This Commission was set up by Congress in 1978 with balanced, bipartisan representation from the Senate and the House of Representatives. In addition, the Commission included four cabinet officials and four private citizens, among them Jack Otero, Vice President of the Brotherhood of Railway and Airline Clerks, AFL-CIO.

Immigration experts from the Senate, the House of Representatives, the Executive Branch, and the public at large participated in the research, consultations, public hearings, debates, and negotiations which formed the basis for the Commission's conclusions and recommendations. In holding these hearings on the Commission's report, the Senate and House Immigration Subcommittees have an opportunity to press forward toward a coordinated, integrated immigration policy for the United States.

What kind of policy should this be?

The AFL-CIO reaffirms its support for an immigration policy consistent with the nation's tradition for compassion and humane treatment. We want an immigration policy that is firm, clear, consistent, and fair.

Any new immigration policy should foster reunification of families and offer haven for refugees from persecution, while adhering to the principle of concern for the welfare of American workers and safeguarding the jobs and labor standards of American workers.

We believe that a healthy, full employment economy is essential in achieving the nation's immigration goals. High unemployment reduces America's capacity to pursue our immigration goals and increases the urgency of dealing effectively with illegal immigration.

We reject any suggestion that the primary goal or even a secondary goal of immigration policy should be the fostering of economic growth through the use of low-skilled and low-paid immigrant workers, whether legal or illegal, whether permanent or temporary.

Diversity enriches our society. We are a better nation for the tremendous contributions of the 48 million immigrants who have arrived here since 1820. The United States is and must remain a pluralistic society.

Estimates of the illegal alien population in the United States range between 3.5 and 12 million. By the year 2000, there could be nearly 30 million people living in this sub-class, without rights, prey to unscrupulous employers and subject to the constant fear of discovery. Though frightened and docile, this illegal work force constitutes a threat to minorities, women and unemployed workers who are legal aliens or citizens seeking their own opportunities for a better life.

As members of a nation of immigrants, and as representatives of workers who built unions as the means to escape exploitation, we deeply sympathize with those who seek a better life in our country.

The overwhelming majority of illegal immigrants come to America to support themselves and their families. Too often, unscrupulous employers prey upon these illegal aliens, forcing them to accept low wages and substandard working and living conditions in an atmosphere of fear and exploitation.

For an example of the terrible exploitation that takes place, let me call your attention to a recent report in the Washington Post on April 26. The news story told about a raid on sweatshops in New York City's Chinatown with the raid led personally by Secretary of Labor Donovan.

The Secretary and his Sweatshop Strike Force found more than 60 illegal aliens, many from Hong Kong, including a young girl in the sixth grade and a 90-year-old woman, both working for only $1 an hour. In all, they found 22 children illegally employed, including 10-year-olds who used sharp trimming shears and 12 to 15-years-olds who operated sewing machines.

These problems are of acute concern to the American labor movement which insists on safeguarding its hard-won standards of life and work. Unfortunately, illegal aliens are highly vulnerable because they are without many of the basic legal rights enjoyed by U.S. citizens and legal resident aliens.

This potential for economic exploitation, coupled with the labor movement's historic compassion for the unfortunate, makes it very important that there be a strong, fair U.S. immigration policy.

As noted, we believe this policy should foster reunification of families and should provide haven for refugees from persecution, while taking a realistic view of the job opportunities and the needs of U.S. workers. Furthermore, we believe, as a prerequisite to action on legal immigration, U.S. immigration policy must deal effectively and fairly with the problems of illegal immigration.

To deal with these problems, the AFL-CIO supports legislation along the following lines:

1. Employer Sanctions

Federal law must provide effective penalties for employers who hire illegal aliens, including criminal sanctions and injunctions to prevent repeated violations. The lure of jobs is what brings most illegal workers into the U.S.A. The quickest and the best way to stop illegal immigration is to stop giving jobs to illegal immigrants.

Therefore, we endorse the recommendation of the Select Commission (II.B.1) that legislation be passed making it illegal for employers to hire undocumented workers. Likewise, we endorse the Commission's recommendation (II.B.2) that the enforcement of existing wage and working standards legislation be increased in conjunction with the enforcement of employer responsibility.

We are encouraged by these key Commission recommendations for employer sanctions because they reflect an emerging national consensus that the serious problem of illegal immigration demands immediate action by Congress. Employer sanctions, a workable identification system, and effective border control are essential components of the necessary attack on illegal immigration.

2. Identification

Without an effective identification system, employer sanctions will not work. It is indeed possible that sanctions might lead some employers to discriminate against some U.S. citizen workers. Therefore, we believe that federal law must protect American workers from employer discrimination by creating a system of identification for work purposes. The potential for discrimination is serious enough to warrant development of a more secure identification mechanism to enable employers to determine readily the legal status of job applicants. There must also be stringent, effective enforcement of civil rights laws to protect workers against any possible employer discrimination against U.S. citizens with Hispanic surnames or any other U.S. citizens.

We note that the Select Commission did not reach a consensus on the specific type of identification that should be required for verification of eligibility of prospective employees for employement. While we oppose any "work permit" as used in Europe, we believe there must be a standard identification system to be checked by the employer at the time of hiring.

We believe two fundamental safeguards are necessary for eventual implementation of a standard identifier: (1) a requirement that no person eligible under the law be denied documentation; (2) a further requirement that no documentation can be revoked if issued according to the law. Because it is recognized, familiar, and already required in job applications, the Social Security card could be used if improved and made counterfeit-proof.

Until an effective identification system is developed, other evidence could be used. The alternatives could include a birth certificate, naturalization certificate, alien registration card, voter registration, U.S. passport, or immigration or registration document. The employer should certify with a checkmark on a regular form, such as the W-4, that such identification has been examined.

Some people have argued that an effective, secure identification system -- whether using a counterfeit-proof Social Security card or a data-bank or some other system -- will have high start-up costs. We suggest that unemployment of U.S. citizens displaced by illegal alien workers has a high cost also, with a $30 billion cost to the

U.S. Treasury in lost tax revenues and higher welfare and unemployment costs for each 1 percent of unemployment.

3. Border Control and Interior Enforcement

Effective border control and interior enforcement are also essential to stop illegal immigration. (II.A) We concur with the Commission that additional funding is necessary to strengthen border control and prevent illegal immigration. We also support the Commission (II.A.6), in urging more effective interior enforcement with follow-up and verification of departure by non-immigrant persons in the U.S.A. with legal visas.

We want adequate support by the Executive Branch and adequate funding by the Congress to strengthen border and interior enforcement activities of the Immigration and Naturalization Service and to strengthen anti-smuggling activities to stop illegal entry and illegal immigration.

We support upgrading the post of Commissioner of the Immigration and Naturalization Service to the post of Director. (The long delay in making an appointment of a Commissioner has been a serious obstacle to effective operations at INS.) We urge equal funding consideration by the Executive Branch and by the Congress for service and enforcement functions of the INS. Funding requests for INS should be considered strictly on their own merits. There must be increased funding for additional personnel, equipment and training at INS.

Unfortunately, the fight for constructive immigration laws and policies is effectively nullified when positions and funds to support those policies are withdrawn. The AFL-CIO registers strong opposition to the Administration's budget proposal for INS and urges full restoration of the 1,355 positions and $21.6 million which would be cut under the Reagan Administration's budget plan.

The elimination of positions and over time of INS employees will serve only a short-run cosmetic purpose of achieving savings in government. In fact the long-run cost to our nation due to increased illegal immigration will be very large. As we have in the past, the AFL-CIO urges that the funding and staffing of the INS be increased to the point where this government agency may perform its important mission of providing a system of orderly immigration to the U.S., while protecting American workers from unfair competition of illegal foreign labor.

Improving administration and employee morale at the INS will require better pay, working conditions, benefits, training, and resolution of long-standing labor-management problems. Although the Commission report does make important recommendations in these areas, there are also inaccurate and misleading characterizations of INS employees as insensitive and unresponsive. Corruption and other abuses must, of course, be corrected. This will require better management and more human and financial resources. A sweeping rebuke of INS employees is unwarranted and unacceptable.

4. Labor Standards and Anti-Discrimination

In addition to employer sanctions, a workable identification system, and effective border and interior controls, we strongly support increased enforcement of existing wage and working standards legislation, as recommended by the Select Commission (II.B.2). The Labor Department should step up enforcement of labor standards legislation in areas and industries where significant numbers of illegal aliens are employed. Speedy prosecutions and stiff fines should be put into effect promptly against repeated offenders who violate the Fair Labor Standards Act, the Farm Labor Contractors Registration Act, the Occupational Safety and Health Act, Social Security, unemployment insurance, and other federal laws.

Likewise, we support increased funds for INS to enable INS investigators to conduct area control operations where they have probable cause to believe illegal aliens are working, but such activities must not in any way be used to discourage the right of workers to engage in collective bargaining.

Title VII of the Civil Rights Act and other existing anti-discrimination laws must be rigidly enforced to eliminate any possibility that employers may discriminate against U.S. citizens.

5. Temporary H-2 Workers

The AFL-CIO opposes any program which would permit importation of foreign labor to undercut U.S. wages and working conditions. Congress wisely killed a "bracero" program in 1962 and we oppose revival of such a program in any form, whatever the label. Such "bracero" or "guest-worker" programs are contrary to the interests of U.S. workers. They will exacerbate unemployment and undermine the already low levels of wages in those industries which might employ such temporary workers.

No one should accept the idea that temporary foreign workers must be brought into the U.S.A. to take jobs that American workers won't take. This idea is just plain wrong. In fact, in a news story April 29, the Los Angeles Times reported its recent poll which found that 75 percent of unemployed American workers would apply for and accept menial work paying from the federal minimum of $3.35 to $4.50 an hour. I might point out that $4.50 an hour for a full-time year-round job produces an annual income just barely above the poverty level for a worker with three dependents.

We applaud the overwhelming and bi-partisan 14-2 rejection by the Select Commission of any recommendation to initiate new large-scale "bracero" or "guest-worker" programs now or in the future. We agree with the Commission in believing "that government, employers and unions should cooperate to end the dependence of any industry on a constant supply of H-2 workers" (VI.E).

We agree with the Commission that the H-2 programs should be changed to "remove the current economic disincentives to hire U.S. workers by requiring ...employers to pay FICA (Social Security) and unemployment insurance for H-2 workers." (VI.E.)

6. Labor Certification

Likewise, we agree with the Commission in calling for continued responsibility in the U.S. Department of Labor for labor certification that U.S. workers are not available and that the employment of temporary H-2 non-immigrant alien workers will not adversely affect the wages and working conditions of other similiarly employed U.S. workers. (VI.E)

At present, Section 212(a)(14) of the Immigration and Nationality Act provides that aliens seeking to enter the United States to perform skilled or unskilled labor are excluded "unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that (A) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of aliens who are members of the teaching profession or who have exceptional ability in the sciences or the arts), and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor and (B) the employment of such aliens will not adversely affect the wages and working conditions of the workers in the United States similarly employed."

This language provides vitally important protection for American workers, and we most strongly urge that this labor certification process be continued and maintained. We have no quarrel with the Commission recommendation (VI.E.) that the application process should be streamlined and the timeliness of decisions improved, but we insist that the key purpose of the labor certification requirement is to protect the jobs, the wages, and the working conditions of American workers and not to make the program "more responsive to the needs of U.S. employers," as suggested in the Commission's report (page 228).

We believe there is a urgent need for better enforcement of the labor certification process required by Section 212(a)(14).

Let me cite just a few examples of the need for better enforcement of the labor certification requirements.

In Denver, Colorado, Service Employees Local Union 105 reported in 1979 that a janitorial service was importing Korean workers on temporary two-year permits and substituting these Korean workers for more than 70 American citizen workers in janitorial and custodial work at Stapleton International Airport. More than two-thirds of the displaced American workers were minorities with poor prospects for finding other jobs.

In another situation, in violation of legislation requiring U.S. citizen workers on drilling rigs, platforms and other equipment on the Outer Continental Shelf, the Seafarers and other unions involved in offshore construction in 1979 found that alien workers were being used and were taking away jobs from American workers.

Also in 1979 the AFL-CIO reported to the Labor Department a number of labor certification abuses, including German bricklayers on temporary work visas building a feed plant in Theodora, Alabama; imported German and Vietnamese workers painting a tanker in a

New Orleans shipyard; and imported temporary Mexican workers being used to disassemble a plant in Tuscaloosa for shipment to Mexico in spite of high unemployment in the area; and various other cases of imported foreign workers employed at the cost of jobs of American workers.

These are only a few examples of the many abuses of our immigration laws and the lack of essential protections for American workers from displacement.

The AFL-CIO believes that Section 212(a)(14) be retained in any revision of the present immigration law. Unless the Secretary of Labor has the responsibility of determining in advance that the admission of aliens will not adversely affect employment opportunities or wages, hours, and other conditions of employment in the United States, the Secretary cannot effectively regulate the flow of immigrants coming to the United States to seek employment.

We have often indicated to the Department of Labor our willingness to cooperate in developing procedures and regulations which would make the application of Section 212(a)(14) more workable from the standpoint of its administration and effectiveness. We are glad to renew this offer of cooperation at this time.

7. Legalization of Status

The AFL-CIO supports the Select Commission's proposal (II.C.) for legalization of the status of illegal aliens resident in the United States. However, in line with the Commission's recommendation (II.C.3.), we insist that the legalization process should not begin until the massive flows of illegal aliens into the United States have been stopped. Otherwise, the legalization process would simply encourage additional flows of illegal aliens.

A reasonable and humane legalization program would adjust the status for illegal aliens with a demonstrated attachment to the community. While the length of time an alien has lived in the U.S.A. is one factor to be taken into consideration, subjective values, including compassion for the families involved are also of great importance. We would reject any mass deportations.

8. Legal Immigration

While we support the concept of expanded legal immigration, a substantial increase at this time would be premature and unwise.

In our judgment, curbing future illegal immigration and legalizing current residents must be accomplished first. There is a need to absorb the full effect of a decade of large-scale legal immigration and refugee flow and to regularize illegal aliens and their relatives before increasing the present levels of legal immigration.

Therefore, we do not favor the new immigration model which is part of the Commission recommendations. (III.B.Table 7.) We support continued emphasis on reunification of families and a humanitarian policy toward refugees and due regard to safeguards for American workers as essential components of any long-run policy on legal immigration.

9. Refugee Policy

The AFL-CIO reiterates its support for the Refugee Act of 1980 and for America's continued acceptance of refugees as an essential part of this nation's immigration policies. No nation in the world accepts as many refugees as the United States. This responsibility should be shared to a much greater degree by the other nations of the free world. While the United States should continue to provide haven for refugees from political persecution, this nation cannot and should not be expected to accomodate the more than 15 million refugees now scattered throughout the world. International refugee problems demand international responsibility with humane, multilateral solutions.

10. International Development

There must be an expanded program for economic development in the countries from which illegal aliens come. Only when the "push" factor of no jobs and low income in these countries is effectively dealt with can the problem of job-seeking illegal aliens be fully and finally resolved. Any program involving U.S. aid for economic development in these countries must, of course, make certain that jobs, wages, and working conditions in the United States are not lost or undermined as a result of such foreign aid or investment program.

The AFL-CIO has consistently supported the kind of U.S. aid to developing countries that increases job opportunities, raises workers' income, and lifts living standards for workers and their families. It is essential that U.S. aid programs help developing nations establish and strengthen free democratic institutions, including trade unions, and promote strong domestic economies with more income and buying power for workers and their families. Decent wages and decent working conditions and decent labor standards help develop the kind of economy that will provide jobs and income that will keep workers in these other nations from illegally seeking work in the U.S.A.

Representative MAZZOLI. Mr. Chairman, can I make a couple of statements?

Senator SIMPSON. Please.

Representative MAZZOLI. Thank you very much. I want to thank the panel, Mr. Donahue and his colleagues, for their help today. I would like to thank all the panels. I would like to thank my friend Bill McCollum and all the members of our subcommittee who were here today. But particularly, Mr. Chairman, I thank you and your colleagues and your staff for the warm welcome we have received, and for the cooperation in establishing today's meeting. I must say it has been very fruitful, and it is a fine first day of this first series of three hearings, which I think will lead to action on this report. I want to thank you very much for your hospitality.

Senator SIMPSON. Well, thank you. I hope we can reciprocate tomorrow as we come to the House for our hearing, which will be tomorrow at room 2141 at 2 p.m., as we continue the joint hearing on the second day of the 3 days of joint hearing.

And let me too thank you, Mr. Donahue. Your testimony and what you hear from these people in Congress, I think shows that for the first time in many, many years there is a unanimity there that has never been there before, when we have the AFL-CIO in its position, which is not far removed from the positions of many of us. We can differ on temporary workers or some form of identification, but the issue is, to me, and I know to Chairman Mazzoli, is if we are ever going to get something done, it seems the time is here. The constituency groups are out there for some action.

So your testimony underscores that, that we may make the grade. At least that is our real hope. There is one group in America that must be carefully recognized, and they will through many hearings, and that is the Hispanic organizations of America. They have the most to fear and they feel the most threatened and we are going to be working closely with them so that their say is said.

But there is an interesting constituency building and perhaps we can finally get something done. So I thank you for the cooperation and the amazing attendance, like total, of the House Subcommittee, and hopefully we can do that.

Thank you and we will recess until 2 p.m. tomorrow.

[Whereupon, at 5:45 p.m., the hearing recessed, to reconvene at 2 p.m. the next day.]

FINAL REPORT OF THE SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY

WEDNESDAY, MAY 6, 1981

U.S. CONGRESS, SUBCOMMITTEE ON IMMIGRATION, REFUGEES AND INTERNATIONAL LAW OF THE HOUSE COMMITTEE ON THE JUDICIARY AND THE SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY OF THE SENATE COMMITTEE ON THE JUDICIARY,

Washington, D.C.

The subcommittees met at 2:10 p.m. in room 2141 Rayburn House Office Building, Hon. Romano L. Mazzoli (chairman of the House subcommittee) presiding.

Present: Representatives Schroeder, Frank, Fish, Lungren, McCollum, and Fascell; and Senators Simpson (chairman of the Senate subcommittee), Thurmond, and Kennedy.

Mr. MAZZOLI. The hearing will come to order.

For those of you who were with us yesterday, you will know that this is our second day of what will be 3 days of hearings on a report filed by the Commission headed by Father Hesburgh on immigration and refugee policy. For those who were not with us yesterday, I must say—and I will yield to my friend from Wyoming soon—that I thought the meetings went very well, and they are historic. So far as our archivists have been able to determine, there have been few of this kind of meeting in the past.

We are here not just for the sake of getting a double whammy on our witnesses, but to indicate the collegiality and the cooperation which exists between the House and Senate, perhaps for the first time in recent history, which I think will yield, if anything can, some solutions to these vexing problems which have been presented to us yesterday and will be amplified today by our distinguished witnesses.

Seeing the crowded room, I believe it is an indication of the interest across the board.

I would like to yield to the gentleman whose cooperation has made these joint hearings possible. He is a pleasure to work with. His staff has been at all times diligent and helpful. And if Senator Simpson, the chairman of the Senate Committee on this subject, would care to have some words, we welcome him to the House Chamber.

Senator SIMPSON. Thank you very much, Congressman Mazzoli. I am looking forward to the continuation of the joint hearings. They are nearly unprecedented. I think this is the first time in 30 years.

We are doing that to display this aura of collegiality and, even more importantly, to reflect that there is no partisanship—bipartisanship yes; we are going to have a lot of that, hopefully—but there is no partisanship in the issue of immigration and refugee policy.

We will have a tough, tough situation and we are going to hang together. We both have made that pact. It is an emotional, highly charged, powerful issue.

I really am enjoying working with Chairman Mazzoli in the spirit of what I hope is a total reformation of our immigration and refugee policies and new progress in every way. And I want to thank you especially for the most extraordinary attendance yesterday in the Senate of the United States, when each member of this subcommittee was present.

Today Senator Kennedy is hoping to scrub one of his commitments and will attempt to be here. Senator Thurmond will be here, Senator DeConcini, and Senator Grassley.

But that was an auspicious beginning and great questions, great attendance, great interest. I am looking forward to the continuation of the hearings, looking forward to a continued relationship with you.

Mr. MAZZOLI. I thank the distinguished Senator from Wyoming. Before I yield to my two friends from Florida, one of whom is a member of the committee and one of whom is newly attached to the committee for the moment, I would like to mention for the benefit of the Senator from Wyoming that this morning, when the House Subcommittee on Monopolies marked up the Department of Justice authorization, including the section on the Immigration and Naturalization Service, there was much said that immigration policy, the whole question of movements of people around this Nation, and around the world, constitutes the most pressing problem we have in the world.

So I think the Senator and I have, as he said, a very difficult subject matter, one on which we have both pledged to work hard to accomplish some suitable goals.

I would like at this point to yield to the gentleman from Florida, who is a member of this subcommittee. He has been an excellent working member of the committee, and he contributed much during our recent trip to California in his questions and in his interest in the subject matter. The gentleman from Florida, Mr. McCollum.

Mr. MCCOLLUM. Thank you, Mr. Chairman.

Before I proceed, I would like to ask the chairman for the unanimous consent of the subcommittee to permit coverage of this hearing by television broadcast, radio broadcast, or still photography, in accordance with the rules of the Judiciary Committee of the House.

Mr. MAZZOLI. Without objection, it is so ordered.

Mr. MCCOLLUM. It is my great pleasure today to be a Florida member and to have before us the Governor of the great State of Florida, Robert Graham.

I want to comment before I introduce him further that I heard an introduction this morning that I have never heard before. I have heard many introductions in my time, Governor, but my colleague Mr. Fascell over here to the right is remembering that I heard him introduced as the place kicker for the sandlot football team of the Sigma Nu Fraternity, and known as Golden Toe Graham.

Well, I will tell you one thing. Of all the things I have had to do with him, he has had a golden toe about it, that is for sure.

And with respect to immigration, which we are about to discuss today, if we continue these deliberations I can assure my fellow colleagues from both the Senate and House that Gov. Graham and I and those from the Florida delegation particularly share a nonpartisan view. We are very strongly committed to resolving these issues. And he and I have worked together and had the pleasure of working with staff.

And it is a delightful pleasure to be able to present Governor Robert Graham to you and to the entire panel today.

Mr. **Mazzoli**. Thank you very much, Mr. McCollum.

And would the gentleman from Florida, Mr. Fascell, who is informally attached to our committee today, care to say anything?

Mr. **Fascell**. Mr. Chairman and members of the committee, thank you very much for the courtesy extended to me in permitting me to participate today and hear our distinguished Governor. I want to join my colleague from Florida in welcoming him here and to listen to his testimony.

He not only has a golden toe, but he is a very able and bright Governor. We are proud of him in Florida. And I might just add a little personal note, if you will forgive me, just to say that probably one of the better things I have done since I have been in Congress was to permit the Governor to intern in my office.

Mr. **Mazzoli**. Very good. You have a good relationship. Thank you very much.

The ground rules we have today, which we had yesterday, because of the number of witnesses, limit the statements to 5 minutes apiece. Then the members will be asking the questions.

Our first panel which is before us today is composed of State and local government officials. Our second panel this afternoon will involve public organization witnesses, representing primarily minority groups. And our third and last panel this afternoon will be of lawyers active in the field of immigration.

So we first have heard the introduction of the distinguished Governor of the State of Florida, Robert Graham. To Governor Graham's right is the mayor of Rockville, Md., one of our neighbor cities, Mayor William Hanna, representing the U.S. Conference of Mayors. And to the Governor's left is the distinguished chairman of the Board of Commissioners of Lancaster County, Pa., James E. Huber, who is representing the National Association of Counties.

If there is no problem, Governor, you might proceed, then, Mayor Hanna and Commissioner Huber.

STATEMENT OF HON. D. ROBERT GRAHAM, GOVERNOR OF THE STATE OF FLORIDA, ON BEHALF OF THE NATIONAL GOVERNORS' ASSOCIATION

Governor **Graham**. Thank you, Representative Mazzoli and distinguished members. I am pleased to appear before you this afternoon to address some of the issues you will face as you seek to improve U.S. immigration and refugee policy.

The Nation's Governors have been keenly interested in our national refugee program for several years. Iowa Gov. Bob Ray and Michigan Gov. Bill Milliken, whose visit to the refugee camps of Indochina touched them deeply, were early and vigorous spokesmen for a strong Federal program to address the plight of these people. Their interest led to the National Governors' Association's 1979 policy statement urging both American and international action to relieve the human tragedy in Indochina.

In 1980, the association addressed the issue of large-scale entry of foreign nationals into the United States. Recognizing federal primacy in the area of immigration policy—the association has not met since the Select Commission issued its report and thus has not formally adopted a response to its recommendations.

I testify today as Governor of Florida, but my comments are presented against the background of the association's earlier policy positions.

I particularly want to discuss an issue that continues to have tremendous impact on my State of Florida, the unexpected massive arrival of refugees from political repression and economic hardship. In the past year, 140,000 Cuban and Haitian refugees poured into Florida, as the Federal Government stood by without any policy or statutory basis for action. Today we are still awaiting action on the main areas of immigration policy that have been found drastically inadequate.

We must develop a Federal contingency plan to deal both with any future waves of illegal immigrants and the constant stream that continues today. The State of Florida has developed such a plan and it is absolutely essential that the Federal Government do so as well.

We must develop a clear-cut Federal immigration policy that designates which immigrants we will accept into this country and in what numbers. This policy must include a system that works to identify all immigrants, assign their status, and follow up on this status in accordance with our laws.

Moreover, the special entrant status pending designation status, granted to Cubans and Haitians last summer is a continuing avoidance of the responsibility for a clear-cut policy. Special status has already been extended twice. It is time to stop postponing a decision on these refugees and determine once and for all what is to be done with them.

We must develop a policy that recognizes the broad range of responsibilities still facing the Federal Government in dealing with those entrants already in our country. Many of last summer's refugees still await resettlement in temporary facilities. In one such facility in Florida, this recently led to disturbances among those who have waited too long to be found a location in which to begin their new lives.

In addition, the Federal Government must recognize the wider range of assistance States and localities require in meeting the demands of an increased refugee population. These include greater support for education, special impact aid to respond to the increased need in such areas as housing and the criminal justice system.

Finally, if we are to have laws and policies, the Federal Government must resolve to enforce them. We cannot subsidize faild foreign societies and their undesirables with a policy that declares in effect anyone who can land their feet on the sands of Florida's beaches has permanent license to run through Florida's streets.

Since the Federal Government was unwilling to enforce the immigration laws when illegal criminal aliens entered our country last summer, it must take responsibility for expelling those individuals now. Since the arrival of the Mariel refugees, our State has endured a large rise in the crime rate, due in part to the many known criminals who illegally entered this country with the law-abiding refugees.

Castro's criminals do not belong in Florida's communities. They belong back in the same jail cells they left in Cuba a year ago.

In all of these areas I ask Congress to initiate immediate action. Of all the options before us, the least acceptable is to do nothing. The current situation is unacceptable for two very clear reasons, which I state in conclusion:

First, it is unacceptable because it places an unduly harsh burden on the local communities and States that must pick up the slack for Federal inattentiveness. Second, it is unacceptable because the current situation sends a signal to despots around the world that they can dump their refuse on the United States because we are unwilling or unable to enforce any controls over who enters our country. We cannot allow our Nation to lose control of its borders.

[The prepared statement of Governor Graham follows:]

PREPARED STATEMENT OF HON. D. ROBERT GRAHAM, GOVERNOR OF FLORIDA

Senator Simpson, Representative Mazzoli, distinguished Committee members. I am pleased to appear before you this afternoon to address some of the issues you will face as you seek to improve U.S. immigration and refugee policy.

The Nation's Governors have been keenly interested in our national refugee program for several years.

Iowa Governor Bob Ray and Michigan Governor Bill Milliken, whose visit to the Refugee Camps of IndoChina touched them deeply, were early and vigorous spokesmen for a strong federal program to address the plight of these people. Their interest led to the National Governors' Association's 1979 policy statement urging both American and international action to relieve the human tragedy in IndoChina.

In 1980, the Association addressed the issue of large scale entry of foreign nationals into the U.S. Recognizing federal primacy in the area of immigration policy, the Association urged federal attention to the full range of impact such people have upon our society and pledged the support of state governments in implementing federal policy.

The Association has not met since the Select Commission issued its report and thus has not formally reviewed its specifics.

I testify today as Governor of Florida, but my comments are presented against the background of the Association's earlier policy positions.

The refugee issue is one of tremendous importance to the people of Florida. Refugees have for many years made up a large percentage of our population, and have contributed to our culture and our growth. In the last year, however, the refugee issue has taken on a new crisis status: Since the first boatload of Mariel refugees on April 12, 1980, more than 140,000 Cuban and Haitian refugees arrived in Florida. Florida has had to absorb a large and continuing population influx. We have had to confront a rise in the crime rate due in part to the many criminals who illegally entered the country with the other Mariel refugees.

Refugees across our nation, just as in Florida, have for the most part been individuals who are able to support themselves and bring skills and education with them to the United States. Most refugees do not present the special problems associated with influxes such as the Mariel Cubans, or many recent refugees from IndoChina. It is precisely because these special cases, which are not in the majority, present severe problems, that we must address these concerns separately from the overall, positive aspects of immigration into our country. It is this specialized area of particular concern that I wish to speak about today.

Everyone recognizes that immigration and refugee policy is the domain of the federal government, and that, therefore, the burdens of immigrants and refugees are the responsibility of the federal government. Florida's recent experiences have highlighted the areas in which federal action is urgently required to rectify refugee handling. There are three broad areas of concern in which the federal government must act: funding, management issues, and placement strategies.

FUNDING

The admission of refugees into this country obviously requires a great human and monetary commitment on the part of our people. Immigration decisions have a fiscal impact--we must shape our immigration policy within the parameters set by the level of assistance we are determined to provide. The first thing federal policy must address is the number of refugees we will allow to enter our country each year. We will never solve the funding problem without limiting the number of refugees we accept to the number that we are willing and able to support.

We must also be willing to adequately fund those whom we do allow to enter. Our goal has long been to aid all refugees by educating them, employing them, and getting them off public assistance as quickly as possible. To further achievement of this goal, Congress recently applied a three-year limit to the length of federal assistance for refugees. If our social service programs are to meet their responsibilities to these refugees within the allotted time, however, they require increased funding. It is unreasonable to impose a deadline on these programs, and not give them the resources to meet it. At the time that the three-year limit was imposed, there was no corresponding increase in support for these social services.

Now, we are concerned that the federal government will not meet even its existing commitments in this area. Congress is now considering an Administration request to rescind $50 million already appropriated for refugee assistance programs. But even as the Appropriations committees consider this proposed cutback, the Office of Refugee Resettlement and HHS are concerned that a funding shortfall will occur in fiscal year 1981. Moreover, the 1982 budget allots funds for all refugee education programs for only a one-year period, and provides no funds for the Cuban/Haitian entrant education assistance program.

In meeting the funding needs of those we choose to admit, the federal government must recognize the broad nature of support required. The Refugee Assistance and Cuban/Haitian Education Assistance Acts of 1980 are major steps forward in providing for federal reimbursement of up to 100 percent of medical and social service expenditures by the state and local governments. The federal government must go further, however, in recognizing the wider range of assistance states and localities require in meeting the demands of an increased refugee population. These include greater federal support especially in the areas of education and criminal justice. The federal government must act to ameliorate domestic costs identified with refugee assimilation and adjustment.

Since refugees tend to migrate to concentrated urban areas, these areas must bear a special burden, as available resources and jobs are spread thin. The federal government must provide for flexibility in the three-year funding cut-off rule, to help especially burdened areas meet their responsibilities to the refugees and their own citizens.

Finally, as the basis for many federal funding programs are census and employment statistics, the federal government must make stronger efforts to reflect refugee populations in these figures, especially following large-scale resettlements. Otherwise, those areas that carry the nation's burden by housing those who seek refuge here, will receive inadequate compensation for the services they perform. Congress provided a mechanism to allow such adjustments in the 1980 Census figures, with the understanding that this mechanism would be usable in 1981. So far, however, it has not been utilized; Congress must act to insure that it is.

MANAGEMENT ISSUES

One area of fundamental concern to this committee must be proper management of the refugee problem across several levels of government. Several management issues are in deep need of our attention.

Clarification of Agency Roles. Due to the wide reach and complexity of the issues involved, numerous federal agencies are responsible for the development and implementation of refugee-related policies and programs. Each agency's responsibilities and their inter-relationships must be carefully defined. Governors and state refugee coordinators require quick access to one central, responsible federal official and one authoritative source of information when problems and crises arise in their states. A strong, central focal point is needed within the Administration to insure consistent coordination between the Departments of State, HHS, and Justice, as well as domestic resettlement agencies under contract to the federal government.

Coordination and Consulation. Coordination and consultation on resettlement matters must be brought about between the federal, state and local governments, and the private voluntary agencies. Currently, only two states participate directly in the resettlement of refugees. In all others, refugees are resettled by private groups, often without proper consultation with state agencies.

States must be kept abreast of resettlement efforts within their borders, so that they can maintain the necessary level of services for all members of the community, including the refugees. We cannot continue to keep state governments in the dark about who is being brought into their communities. Greater cooperation and consultation between the states, the federal government, and the voluntary agencies is essential. One solution is to require voluntary agencies to file their resettlement plans with appropriate federal agencies to facilitate this goal. The states also strongly advocate an advance planning and reporting system that will provide for agreement on resettlement plans between state governments and private groups before the awarding of reception and placement grants. Such a process could utilize, at the state's option, the current A-95 review and comment procedure.

Whatever specific process is adopted, we must take action now that guarantees that we will all be working together on this issue, and not separately or at cross-purposes.

Contingency Planning. The sudden influx of Cubans in the Mariel boatlift proved to be an absolute disaster for the national Administration, because it showed that we had no federal policy or capability to deal with such a refugee crisis. The time has come to stop ignoring this problem: We clearly need a federal contingency plan to deal with unanticipated flights of refugees to this country. If the federal government does not assume responsibility for all the human dimensions of the sudden refugee influx, then the tremendous burden is left to the states. To illustrate the extent of the load that places on a state, we need only turn to the situation in Florida one year ago today.

On May 6, 1980, four South Florida counties were declared federal disaster areas; 3,594 refugees arrived that day in more than 300 boats, swelling to 18,396 the total number taken in by Florida in less than a month. Three hundred additional national guardsmen were activated on May 6 alone to handle the refugees arriving in Key West, bringing the total Guards called out for that purpose to 700.

Because of the lack of statutory authority and leadership on this issue, a special status had to be created for the Cubans and Haitians who poured into Florida last summer. Today, their status is still pending resolution, hampering efforts to either assist their assimilation into our country or their return to their own country. Because no means were provided to deal with them, many are forced to live in tin shacks or simply out in the street. In preparation for future arrivals, the states and the federal government must work together to designate sites, either within or outside the country, where refugees will be located during initial processing, and specify the number to be held at each site. In this way, state officials will know in advance where refugees will be coming, and in what numbers. The grave problems and impasses encountered by responding only half-heartedly and belatedly to this surprise situation has dampened public acceptance of the regular refugee program. Our citizens must feel confident that the federal government can and will handle any future refugee problems in an orderly and responsible manner, if they are to be asked to support a refugee program at all.

PLACEMENT STRATEGIES

The final challenge facing federal refugee policy is to improve existing placement strategies. Family reunification has long been a guiding principle in placing and resettling refugees. Often, however, distant relatives are placed with "families" they have never met, and incompatability often results. In addition, many refugee families receiving public assistance become the sponsors for additional refugees under this system, leading only to ever-deepening pockets of refugee welfare recipients.

To remedy this situation, we must narrow the definition of family for resettlement placement, to include only immediate family members. We must, in addition, develop other criteria in the placement of refugees that take into account the overall impact of further resettlement in any area.

INTERNATIONAL ASPECTS

Let me briefly touch upon the international dimensions of our refugee and immigration policy. As a sovereign nation, we must take such steps as are needed--consistent with the humanitarian principles which have always characterized our role in world affairs--to insure that migration into the United States is controlled by our government and consistent with our laws.

The social and economic forces at work in the world, particularly in the Caribbean Basin, including Central America, suggest that the Mariel boatlift, the Haitian exodus, and the current flow of Salvadorians and Nicaraguans and the continuous ebb and flow of Mexicans across our southern borders are but the tip of a very large iceberg.

Our policies must recognize that the United States is a strong magnet for much of the world's population. We need to reduce the strength of that magnet through tough enforcement of fair laws and tough efforts to increase the social and economic strength of our hemispheric neighbors. We can better assist our Caribbean friends by providing adequate aid for them in the towns of their homelands than as refugees in this country. We must strengthen the economies of their countries, and support democratic stability so that people of the Caribbean Basin need not leave their own countries to make a good life for themselves. Our government can play a leading role in this effort, but it cannot play the only role; private business can and must act as a catalyst for growth and improvements in these countries. I am proud to work closely with the Caribbean Central American Action and organizations' efforts to bring U.S. private interest together in just such a way, to help better the lives of our Caribbean neighbors.

I look forward to working with you in the weeks ahead, as you address these needs of critical concern to the United States.

Mr. MAZZOLI. Governor, thank you very much, and I appreciate that statement.

Mayor Hanna, you may proceed, and then we will have questions for the panel afterward.

STATEMENT OF WILLIAM E. HANNA, JR., MAYOR OF ROCKVILLE, MD., ON BEHALF OF THE U.S. CONFERENCE OF MAYORS

Mayor HANNA. Honorable chairmen and members of the subcommittees, I am William E. Hanna, Jr., mayor of Rockville, Md. I appreciate the opportunity to share with you the concerns of the Nation's mayors regarding refugee resettlement and their reaction to recommendations of the Select Commission on Immigration and Refugee Policy.

As you know, most of the many thousands of refugees who arrive in the United States each year as a result of national policy come to urban areas. For humanitarian reasons, mayors and their governments welcome the refugees and want to assist them in making a successful transition to their new communities. We strongly believe, however, that several changes in the resettlement system are needed to prevent imposing a severe impact on localities and to enable local governments to service the refugees adequately.

The Washington, D.C., metropolitan area, including Rockville, has the fourth largest concentration of refugees in the Nation. As with several other urban communities where large numbers of refugees have come, this area is experiencing significant difficulties resettling refugees.

We have a severe shortage of low-income rental units, overburdened social service and health systems, and a limited job market. Employment opportunities for refugees are particularly scarce in this area. For the recently arrived refugees, many of whom are unskilled and illiterate, finding a job in our predominantly white-collar job market is especially difficult.

Each month, however, we become the new home for many refugees who need already scarce public resources to become self-sufficient and to adapt to their new life. As a result, our local resources are being strained and competition for limited resources among refugees and other low-income groups is leading to increased community tensions.

We are pleased that in developing their recommendations, the Select Commission recognized some of the realities which local governments face regarding refugee resettlement. The Commission's recommendations regarding U.S. resettlement policy are consistent with most of the policy positions adopted by the U.S. Conference of Mayors over the past years.

Basically, the Commission endorsed the provisions of the Refugee Act of 1980, including the definition of refugees, the numbers of visas allocated to refugees, and how they are allocated and the principles and overall programs of refugee resettlement. The Commission, however, also recommended changes in the refugee resettlement system which respond to local governments' concerns about the impact of refugees on their communities.

The Select Commission recommended that "consideration be given to establishing a Federal program of impact aid to minimize the financial impact of refugees on local services." For several reasons, such as family reunificiation and perceived availability of local resources, some localities receive disproportionately greater numbers of refugees. The impact of the large influx of refugees in many of these communities has been tremendous. At a time of continuing shrinkage of Federal, State, and local resources, the arrival of large numbers of refugees often exacerbates local problems of unemployment, housing shortages, underfunded human services and community tensions.

Existing refugee programs provide important benefits to refugees by reimbursing the States and local governments for providing cash and medical assistance to impacted communities. The U.S. Conference of Mayors supports the establishment of a program of impact aid to local governments to reimburse them for the costs of providing services to refugees.

It is crucial that a program of impact aid be established as a supplement to existing refugee assistance programs, not as a substitute for them. It should be targeted to a limited number of local governments which can demonstrate a substantial impact on community services. The funds could go directly from the Federal Government to the impacted cities and counties. A possible system would be per capita grants to selected local governments which would be administered in the same manner as general revenue sharing funds.

The Select Commission recommended that "State and local governments be involved in planning for initial refugee resettlement." The Refugee Act of 1980 requires the Federal Government to "consult with State and local governments concerning the sponsorship process and the intended distribution of refugees among the States and localities." Such consultation, however, is not taking place.

The Select Commission recommended that refugees be clustered in unimpacted areas, and that mechanisms be developed, particularly within the voluntary agency network, to resettle ethnic groups of similar background in those same areas. Several cities have reached a saturation point and face increasing difficulties in absorbing additional refugees.

The Select Commission recommended that "consideration be given to an extension of Federal refugee assistance reimbursement." The Refugee Act of 1980 limits full Federal assistance to 3 years from the date of entry to the United States. The conference supports this recommendation.

As of now I am out of time.

Mr. **Mazzoli**. I am sorry. If you wish another minute to proceed, that is acceptable. The timer does help us move things along.

Mayor **Hanna**. Thank you, Mr. Chairman.

As of now, local and State governments are not reimbursed 100 percent for the cost of cash and medical assistance for thousands of refugees who remain in need beyond the 3-year period. Many refugees have not become financially self-sufficient in the initial 36 months after arrival in the country.

Where large numbers of refugees have resettled, local and State governments bear a disproportionate amount of the cost of providing services. The conference supports an extension of full Federal reimbursement to State and local governments beyond the established 3-year period, with the same level of services to refugees maintained.

[The prepared statement of Mayor Hanna follows:]

PREPARED STATEMENT OF MAYOR WILLIAM E. HANNA, JR.

Honorable Chairmen and members of the subcommittees, I am William E. Hanna, Jr., Mayor of Rockville, Maryland. I appreciate this opportunity to share with you the concerns of the nation's mayors regarding refugee resettlement and their reaction to recommendations of the Select Commission on Immigration and Refugee Policy.

As you know, most of the many thousands of refugees who arrive in the United States each year as a result of national policy come to urban areas. For humanitarian reasons, Mayors and their governments welcome the refugees and want to assist them in making a successful transition to their new communities. We strongly believe, however, that several changes in the resettlement system are needed to prevent imposing a severe impact on localities and to enable local governments to service the refugees adequately.

The Washington D.C. Metropolitan area, including Rockville, has the fourth largest concentration of refugees in the nation. As several other urban communities where large numbers of refugees have come, this area is experiencing significant difficulties resettling refugees. We have a severe shortage of low-income rental units, overburdened social service and health systems and a limited job market. Employment opportunities for refugees are particularly scarce in this area. For the recently arrived refugees, many of whom are unskilled and illiterate, finding a job in our predominantely white collar job market is especially difficult. Each month, however, we become the new home for many refugees who need already scarce public resources to become self-sufficient and to adopt to their new life. As a result, our local resources are being strained and competition for limited resources among refugees and other low-income groups, which often leads to community tension, will most likely become a problem here as it has in other areas.

We are pleased that in developing their recommendations, the Select Commission recognized some of these realities which local governments face regarding refugee resettlement. The Commission's recommendations regarding United States resettlement policy are consistent with most of the policy positions adopted by the United States Conference of Mayors over the last year. Basically, the Commission endorsed the provisions of the Refugee Act of 1980, including the definition of refugees, the number of visas allocated to refugees and how they are allocated and the principles and overall programs of refugee resettlement. The Commission, however, also recommended changes in the refugee resettlement system which respond to local governments' concerns about the impact of refugees on their communities.

- o The Select Commission recommended that "consideration be given to establishing a federal program of impact aid to minimize the financial impact of refugees on local services."

For several reasons, such as family reunification and perceived availability of local resources, some localities receive disproportionately greater numbers of refugees. The impact of the large influx of refugees in many of these communities has been tremendous. At a time of continuing shrinkage of federal, state and local resources, the arrival of large numbers of refugees often exacerbates local problems of unemployment, housing shortages, underfunded human services and community tensions. Existing refugee programs provide important benefits to refugees by reimbursing the states and local governments for providing cash and medical assistance to impacted communities. The U.S. Conference of Mayors supports the establishment of a program of impact aid to local governments to reimburse them for the costs of providing services to refugees.

It is crucial that a program of impact aid be established as a supplement to existing refugee assistance programs, not as a substitute for them. It should be targetted to a limited number of local governments which can demonstrate a substantial impact on community services. The funds could go directly from the federal government to impacted cities and counties. A possible system would be per capita grants to selected local governments which would be administered in the same manner as general revenue sharing funds.

- o The Select Commission recommended that "state and local governments be involved in planning for initial refugee resettlement."

The Refugee Act of 1980 requires the federal government to "consult with state and local governments ... concerning the sponsorship process and the intended distribution of refugees among the states and localities." Such consultation, however, is generally not taking place. While many of the problems relating to resettlement are felt primarily at the local level, city officials virtually have no voice regarding the placement of refugees in their communities. There is, at best, minimal coordination with local governments regarding advance assessment of the community's ability to service the refugees and of the potential impact of resettlement. The lack of involvement of local officials in the planning of refugee resettlement can have an adverse affect on resettlement efforts as well as on the community where the refugees are relocated. The Conference has urged the federal government and voluntary resettlement agencies to provide adequate notice and to consult with local government officials regarding the number of refugees to be relocated in their city.

- The Select Commission recommended that "refugee clustering be encouraged. Mechanisms should be developed, particularly within the voluntary agency network, to settle ethnic groups of similar background in the same areas."

Several cities have reached a saturation point and face increasing difficulties in absorbing additional refugees. The Conference has recommended that efforts be made to promote distribution of refugees to less impacted areas. In order to ensure effective refugee resettlement in the selected areas, the proposed effort should include direct involvement of local government officials in the planning process with necessary follow-up by the local voluntary agencies.

- The Select Commission recommended that "consideration be given to an extension of federal refugee assistance reimbursement."

The Refugee Act of 1980 limits full federal assistance to refugees to three years from date of entry to the United States. As of April 1, 1981, local and state governments are not reimbursed 100 percent for the cost of cash and medical assistance for thousands of refugees who remain in need beyond the three-year period. Many refugees have not become financially self-sufficient in the initial 36 months after arrival in the country. Where large numbers of refugees have resettled, local and state governments bear a disproportionate amount of the cost of providing services. The Conference supports an extension of full federal reimbursement to state and local governments beyond the established three-year period, with the same level of services to refugees maintained.

- The Select Commission recomended that "the Office of the United States Coordinator for Refugee Affiars be moved from the State Department and be placed in the Executive Office of the President."

The U.S. Conference of Mayors has recommended the transfer of the position of the U.S. Coordinator for Refugee Affairs from the Department of State to the Executive Office of the President. It was felt that such a transfer would facilitate overall coordination of the refugee program. Weaknesses in the current system became evident last spring when the lack of central leadership and coordination among the White House and the various federal agencies contributed to the confusion surrounding the unexpected arrival of approximately 125,000 Cubans.

I have commented this afternoon only on those recommendations of the Select Commission which pertain to refugee resettlement. The Commission, of course, made a number of important recommendations regarding immigration policy. The U.S. Conference of Mayors does not have a policy on these issues at this time. As such policy positions are formulated, however, we will transmit them to you so that you will know where the nation's mayors stand on these issues.

I would like to thank you for the opportunity to appear at this joint hearing and would be happy to respond to any questions you might have.

Mr. MAZZOLI. Thank you very much, Mr. Mayor.

Commissioner Huber, if you wish to proceed.

STATEMENT OF JAMES E. HUBER, CHAIRMAN, BOARD OF COMMISSIONERS, LANCASTER COUNTY, PA., ON BEHALF OF THE NATIONAL ASSOCIATION OF COUNTIES, ACCOMPANIED BY RONALD GIBBS, ASSOCIATE DIRECTOR, NACO

Mr. HUBER. Thank you, Mr. Chairman. Mr. Chairman, honored members of both subcommittees, I am James Huber, chairman of the board of commissioners in Lancaster County, Pa., which is in close proximity to Fort Indiantown Gap, the processing point for Cuban entrants. I am also a member of the National Association of Counties Task Force on Refugees, Aliens and Migrants. And I am accompanied by Ron Gibbs, the associate director of the National Association of Counties.

The National Association of Counties, NACo, appreciates the opportunity to testify at these hearings on public reaction to the final report of the Select Commission on Immigration and Refugee Policy. Although jurisdiction over immigration and refugee policies rests with the Federal Government, such policies nevertheless are of importance to counties, for county governments in every corner of the Nation must deal daily with the impacts of immigrants and refugees on the communities in which they resettle. These impacts include coping with additional burdens that refugees and other aliens place on county services ranging from health care and education to law enforcement.

Our assessment of the final report of the Select Commission on Immigration and Refugee Policy is a positive one. The Commission's work represents a thorough reexamination of the Nation's immigration laws, which importantly takes into account a too often overlooked consideration, the impact of immigrants on the communities in which they resettle.

NACo is in agreement with many of the Commission's major recommendations. For one, we support the Commission's approach to dealing with the problem of undocumented aliens, which calls for stronger enforcement measures to curb the illegal immigration into this country.

NACo agrees with the Commission that employer sanctions against the hiring of undocumented aliens is essential. To verify the eligibility of persons to work, we support the use of existing forms of identification and oppose the creation of a national worker identification system, which could be a threat to civil liberties.

Although NACo supports the employer sanctions, we oppose the creation of a guestworker program. Foreign guestworkers would have the same negative effects on the domestic labor market as illegal aliens have. That is, they too would take jobs away from Americans and lower wages.

Contingent first upon the adoption of strong enforcement measures to stop the entry of additional illegal aliens, NACo favors legalization of the status of undocumented aliens currently in this country. We believe that mass deportations of millions of undocumented aliens is neither feasible nor in the best interests of the United States.

Our support of legalization is dependent on assurances that the Federal Government will reimburse States and counties for any additional cost resulting from it.

NACo feels strongly that counties should not have to bear the cost of the failure of the Federal Government to carry out its responsibility to control illegal immigration. Therefore, we recommend that a Federal impact aid program be established to reimburse counties for the cost of assisting undocumented aliens.

We stress the need for the aid to offset the cost of providing health care to undocumented aliens. In Los Angeles County alone, such costs are estimated to be $121 million for their current fiscal year.

In the area of refugee policy, NACo agrees wholeheartedly with the Commission's recommendation that State and local governments be involved in planning for the initial refugee resettlement and that consideration be given both to Federal impact aid to minimize the financial impact of refugees on local services and to extending the period of Federal refugee assistance funding beyond 36 months.

Even though it is the locality which ultimately must absorb incoming refugees, neither the Federal Government nor voluntary resettlement agencies have coordinated the placement of refugees with local officials. The lack of local involvement has hindered the effective resettlement of refugees.

NACo firmly believes that the Federal Government, which is responsible for admitting refugees, should bear the financial responsibility for the cost of assisting them. Therefore, NACo supports the immediate adoption of House bill 2142, introduced by the Honorable Daniel Lungren and George Danielson.

Related to refugee issues is the issue of the United States as a country of first asylum. Our experience with the influx of more than 150,000 Cubans and Haitians during the past year highlights the need for clear national policies and contingency plans for responding to mass asylum situations.

We recommend that the legal status of recent Cuban and Haitian arrivals be clarified as soon as possible, and that the Congress amend appropriate Federal statutes to clarify the legal rights of applicants for asylum and their eligibility for Federal assistance. To the extent that the States and counties incur additional costs resulting from asylum applicants who remain in this country for long periods of time, we believe that the Federal Government should bear financial responsibility for such costs.

Finally, NACo calls on the Federal Government to develop contingency plans, in consultation with local officials, for handling future mass-asylum situations.

In closing I would point out that counties are firmly committed to providing immigrants and refugees with the same level of services and assistance that is provided to other Americans. However, such services and assistance are not without cost. Where federally determined immigration and refugee policies result in greater costs to State and local governments, we ask that the Federal Government assume financial responsibility for those costs.

Thank you.

Mr. MAZZOLI. Thank you very much, Mr. Huber.

[The prepared statement of Mr. Huber follows:]

Prepared Statement of James E. Huber

Mr. Chairman, honored members of the subcommittees, I am James E. Huber, a member of the NACo[1] task force on refugees, aliens, and migrants, and chairman of the Lancaster County, Pennsylvania, Board of Commissioners. The National Association of Counties (NACo) appreciates the opportunity to testify before you on national immigration and refugee policy issues.

While recognizing that foreign policy, national security, and humanitarian concerns deserve careful consideration in the formulation of national immigration and refugee policies, NACo firmly believes that these policies must also be cognizant of the impacts of immigrants and refugees on the communities in which they resettle. Immigration and refugee policies are both foreign and domestic policies. And county governments in every corner of the Nation must deal daily with the effects of such policies. These effects include coping with the additional burdens that refugees and other aliens place on county services—ranging from health care and education to law enforcement. Although county governments must address the consequences of national immigration and refugee policies, jurisdiction in this area rests with the Federal Government. We would argue that Federal responsibility for immigration and refugee policies should extend beyond making decisions. It should also include responsibility for the costs and impacts of immigrants and refugees. States and counties should not have to bear the costs of implementing Federal decisions over which they have no control.

NACo'S specific policy positions on major immigration and refugee issues include the following:

I. GREATER COORDINATION AND CONSULTATION WITH LOCAL ELECTED OFFICIALS ON THE PLACEMENT OF REFUGEES INTO COMMUNITIES

NACo supports amendments to the Refugee Act of 1980 which would require the Federal Government and voluntary resettlement agencies to consult with local elected officials prior to resettling refugees in their localities. In addition, we believe that the Federal Government should establish a fair share formula for the distribution of refugees nationwide.

Even though it is the locality which must ultimately absorb incoming refugees, neither the Federal Government nor voluntary resettlement agencies have coordinated the placement with local officials, who have no voice in deciding where refugees are intially resettled. The lack of consultation and coordination has hindered the effective resettlement of refugees. The majority of refugees are concentrated in relatively few counties and States. As of January 1, 1981, roughly 70 percent of all Indochinese refugees resided in only 10 States. And within these 10 States, Indochinese refugees are concentrated in a few counties. In fact, two counties in California—Los Angeles and Orange—have more refugees that any other State with the exception of California.

Despite this overconcentration, incoming refugees continue to be resettled in large numbers into already impacted counties, without regard to their capacities to absorb additional numbers. This is not only makes it more difficult for refugees to become self-sufficient, but also often leads to community tensions and resentment toward refugees.

II. FEDERAL FINANCIAL RESPONSIBLILITY FOR THE COSTS OF ASSISTING REFUGEES

NACo believes that the Federal Government, which is responsible for admitting refugees into this country, should bear the financial responsibility for the costs of assisting refugees. During their initial period of resettlement, refugees are in greater need of assistance and services than the general population. The majority of refugees require english language training and job-related services in order to become self-supporting. Even with such services, as of January 1981, one-half of the 444,000 Indochinese refugees in the United States were receiving welfare.

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[1] NACo is the only national organization representing county government in America. Its membership includes urban, suburban and rural counties joined together for the common purpose of strengthening county government to meet the needs of all Americans. By virtue of a county's membership, all its elected and appointed officials become participants in an organization dedicated to the following goals: improving county government, serving as the national spokesman for county government, acting as a liaison between the nation's counties and other levels of government, and achieving public understanding of the role of counties in the federal system.

Under the Refugee Act of 1980, starting April 1, 1981, 100-percent Federal funding of refugee cash and medical assistance costs became limited solely to reimbursement for aid provided to refugees who have been in the United States for less than 36 months. Prior to April 1981, there was no time limitation. Because many refugees have not been able to become self-sufficient within 36 months, the 36-month limitation on full Federal Refugee funding will result in a substantial shift in costs to State and local taxpayers. NACo estimates that the additional costs to State and local governments will total $70 million for the remainder of Federal fiscal years 1981 and 1982.

NACo agrees wholeheartedly with the recommendations of the Select Commission on Immigration and Refugee Policy which address the issue of Federal Financial responsibility for refugees. The Commission recommended that the Congress consider extending the period of full Federal refugee funding beyond 36 months, and consider establishing a Federal program of impact aid to minimize the financial impact of refugees on local services.

NACo strongly supports adoption of H.R. 2142, introduced by Hon. Daniel Lungren and Hon. George Danielson of California. H.R. 2142 would amend the Refugee Act to delay implemention of the 36-month limitation on 100-percent Federal reimbursement of refugee cash and medical assistance costs until October 1, 1982. This delay would prevent an unfair shift in costs to States and counties, while Congress reexamines what a reasonable period of Federal fiscal responsibility is.

NACo also supports the establishment of a Federal program of targeted impact aid to reimburse counties for the costs of assistance provided to refugees. State and local governments must pay for the provision of many services to refugees which are not wholly covered by current Federal refugee funds.

III. FEDERAL RESPONSES TO THE ISSUE OF THE UNITED STATES AS A COUNTRY OF FIRST ASYLUM

Our Nation's experience with the influx of over 150,000 Cubans and Haitians into this country during the past year highlights the necessity for clear national policies and contingency plans for responding to mass asylum situations. To this day, Federal policies regarding the Cuban and Haitian "entrants" in the United States remain confused. Unfortunately, given the political and economic instability in the Caribbean and Latin America, we can expect that large numbers of aliens are likely to continue to cross our borders seeking asylum.

NACo feels strongly that the legal status of recent Cuban and Haitian arrivals needs to be clarified as soon as possible. In addition, Congress should act to amend appropriate Federal statutes to clarify the legal rights of applicants for asylum and their eligibility for Federal assistance. That is, what will be the eligibility of asylum applicants for AFDC, medicaid, food stamps, and other aid programs while they remain in this country?

We raise this issue because current Federal policy is to extend eligibility for AFDC, medicaid, and supplemental security income to many recent Cuban and Haitian arrivals, even though they are not technically permanent residents. That is, eligibility has been granted to Cubans and Haitians in the United States who have pending applications for asylum, or who have the status of "Cuban/Haitian entrant (status pending)." On the other hand, asylum applicants from other countries have not been made eligible for such assistance.

NACo also takes the position that the Federal Government should provide full reimbursement of State and local costs of assisting Cuban, Haitian, and other applicants for asylum while they remain in this country. Asylum applicants have been resettled into communities—without consultation with local elected officials—and burden local resources. Many of them possess needs similar to those of refugees. Because asylum applicants remain in this country for long periods of time because of Federal policies or actions, we believe that counties and States should not have to bear the costs of assisting them.

Finally, NACo calls on the Federal Government to develop plans for handling mass asylum situations in the future. To the extent that such plans may require the resettlement of asylum applicants into communities, State and local elected officials should be consulted in preparing and implementing the plans.

IV. FEDERAL FINANCIAL RESPONSIBILITY FOR THE COSTS OF ASSISTING UNDOCUMENTED ALIENS

NACo firmly believes that the Federal Government, which is responsible for enforcing immigration laws prohibiting illegal entry into the United States, should assume financial responsibility for the costs of undocumented aliens to States and localities. Undocumented aliens place a particularly great burden on county health care services. Because of their low income, it is believed that undocumented aliens rely heavily on county or municipal health care facilities, which are mandated to serve the indigent. For example, Los Angeles County, Calif., estimates that it is incurring $121 million in unreimbursed costs for providing health care to undocumented aliens for the State fiscal year 1980-81. This figure accounts for one-third of the county's total health care costs.

We would argue that, although undocumented aliens utilize locally provided services, most of their tax contributions go to the Federal treasury, not to local coffers. That is, studies indicate that undocumented aliens often have a portion of their wages withheld for Federal income tax and social security; however, because of their low income and the transient character of the undocumented alien population, they are likely to pay little or nothing in property taxes—which are the primary source of tax revenue for county governments. Thus, although undocumented aliens may represent a windfall for the Federal Treasury, they are a drain on county resources.

NACo recommends that a Federal impact aid program be established to reimburse counties for the costs of assistance provided to undocumented aliens. In particular, we stress the necessity of Federal assistance to offset health care costs incurred through assistance to undocumented aliens.

V. ENFORCEMENT MEASURES TO CURB ILLEGAL IMMIGRATION INTO THE UNITED STATES

NACo believes it to be in the national interest to stop the flow of illegal aliens into the United States. We support the position taken by the Select Commission—that, in order to curb illegal immigration, a national program of employer sanctions against the hiring of undocumented aliens is necessary. Most undocumented aliens enter the United States in search of employment. Their employment here for low wages and under poor working conditions has resulted in adverse impacts on the legal domestic work force. Employer sanctions would remove a major pull factor which attracts illegal aliens to this country.

We wish to make it clear that, although NACo supports employer sanctions, we oppose tying them to the creation of a national worker identification system, which could be a potential threat to civil liberties. Instead, we believe that there exist feasible approaches which would utilize existing forms of identifcation for verifying the eligibility of persons to work. NACo also cautions that any program of employer sanctions should include safeguards against potential employment discrimination based on race or national origin.

While NACo supports the use of employer sanctions, we oppose the creation of a guest worker program as a means of curbing illegal immigration. It is our concern that foreign guest workers would have the same negative effects on the domestic labor market as illegal aliens have. That is, they, too, would take jobs away from Americans and depress wages.

VI. LEGALIZATION OF UNDOCUMENTED ALIENS CURRENTLY IN THE UNITED STATES

NACo recommends the establishment of a national program to legalize the status of undocumented aliens currently in the United States, as one facet of a broader program to address the problem of undocumented aliens. Our support is based on the recognition that future control of illegal immigration would be ineffective without first resolving the status of illegal aliens already in this country—and that mass deportation of millions of undocumented aliens is neither feasible nor in the best interest of this country.

In our view, any legalization program is contingent upon first adopting strong enforcement measures—such as employer sanctions—to curb the flow of illegal aliens. Without any assurances that future influxes will be stopped, a program to legalize the status of undocumented aliens currently in this country does not make any sense. Furthermore, our support of a legalization program is dependent on assurances that the Federal Government will reimburse States and counties for any additional costs resulting from such a program.

VII. FOREIGN AID TO ALLEVIATE OVERSEAS CONDITIONS WHICH LEAD TO MIGRATION TO THE UNITED STATES

Immigration and refugee policies both are foreign and domestic policies. NACo strongly believes that this country should continue to be a haven for people from other lands who seek freedom and a better life. At the same time, however, in a world with millions of refugees and with millions more who want to come here, there are practical limits to the number of immigrants and refugees who can be successfully absorbed into his country.

NACo support the use of targeted foreign aid to alleviate conditions in source countries which "push" persons to migrate to or seek asylum in the United States. Consideration should be given to providing greater assistance to countries of first asyium and to other countries which might be encouraged to accept more refugees. To the extent that poor economic conditions in Latin America and the Caribbean are major stimuli for illegal immigration into the United States, the Federal Government might target a larger portion of the State Department's foreign aid budget for this region. In short NACo believes that such a case of foreign aid would not only lead to a reduction in the domestic costs of immigration into the United States, but would also address humanitarian concerns.

In closing, we would point out that the role of county government with respect to immigration is to address the needs of refugees and other immigrants, as is done for other Americans. Counties are fully committed to providing newcomers to this country with the same level of services and assistance that is provided to other Americans. NACo calls for national immigration and refugee policies which pay closer attention to their impacts on communities to be developed. Where Federal immigration and refugee policies result in greater costs for State and local governments, we ask that the Federal Government assume financial responsibility for those costs.

Thank you for the opportunity to speak before you. I am prepared to answer any questions you may have.

Mr. MAZZOLI. I will yield myself 5 minutes to begin the questioning.

Governor, you said that one of the problems was the failure of the United States to have a policy with respect to the Cuban and Haitian entrants, and you said your State does have such a policy. I wonder if you might tell us what that is, and how you have experienced it. There is a need to reconsider the Refugee Act of 1980 eventually, and your observations could be helpful to us.

Governor GRAHAM. In part of the statement that I did not read, I used some examples of May 6, 1980, 1 year ago today, as an example of what was occurring, at which time we received almost 4,000 Cuban undocumented aliens through the Key West entry facility, provided through some 750 to 1,000 active duty National Guardsmen, transportation and other support services, arranged for the housing of those individuals in various voluntary as well as publicly owned facilities from Key West into the West Palm Beach area.

At that time the Federal capacity to respond to this was virtually nonexistent. In order to provide some response, the Federal Government pressed the Emergency Management Agency, an agency which normally responds to natural disasters, into the breach to attempt to respond to this issue.

It was some 30-plus days after the first heavy waves of Mariel boatlifts began to arrive before there was any meaningful Federal presence in terms of how to respond to this. The existing front-line Federal agencies, such as the Immigration and Naturalization Service, were substantially overtaxed, which imposed backup burdens on the other systems.

For instance, at one time about a year ago today, when the refugees were arriving at a rate in excess of 3,000 a day, there were 10 Immigration and Naturalization officers on duty at any given time, which meant that there was an extremely molasses-like processing system, which meant that all of the other support systems had to be maintained for a much greater length of time than would have been necessary had the processing been expedited.

Mr. MAZZOLI. You mentioned that we should no longer have to subsidize failed foreign or domestic policies of other nations, which I think is an interesting statement. I wonder if you have any thoughts for us on what happens and how the word gets out that we will not be the willing recipient of great masses of people when they live but 90 miles away. How do we keep from, because of our proximity, being this kind of a dumping ground, if you will, for their unwanted, and at the same time the haven for those who want to leave?

Governor **Graham**. First, this must be put in the historical perspective. What happened to the United States by actions of the Cuban Government in 1980 is almost without historical precedent. The closest example to this would be what the Vietnamese Government did when it took action to force out onto the seas some of its unwanted persons.

I believe that a beginning point towards indicating the seriousness of our objection to this is how we treat those persons who would have been excludable had they attempted to gain entry to the United States through the normal process or who by their actions since they have been in the United States have demonstrated that they are no longer eligible for a parole status.

I know that there were efforts made within the last 6 months to negotiate a bilateral agreement with the Castro government for return of those social deviants and other excludable persons. Those negotiations have not as yet led to any agreement.

I believe the United States must be prepared to take unilateral action to return those individuals, because the alternative of accepting the status quo sends that signal to Castro and others of his ilk that it is a way to eliminate your undesirables, to send them to the United States.

Mr. **Mazzoli**. You have certainly thought this out more than I, perhaps. What would be your proposal on how to get rid of these people unilaterally?

Governor **Graham**. One suggestion that has been made is to return them through our naval base at Guantanamo. I recognize that that is a course of action which carries with it substantial risks, risk of confrontation, risk of counteraction by the Castro government.

What has to be accepted is how deep the consequences are of inaction, and in my judgment the risks of action are less than the risks of a placid acceptance of the status quo.

Mr. **Mazzoli**. Thank you very much.

I yield to the gentleman from Wyoming for 5 minutes.

Senator **Simpson**. Mr. Chairman, I am going to yield it right back. We have a rollcall vote, so if other members of the subcommittee would like to question, I will be right back.

Mr. **Mazzoli**. The gentleman from New York and the ranking member of our panel on the House side, Hamilton Fish of New York. The gentleman is recognized for 5 minutes.

Mr. **Fish**. Thank you, Mr. Chairman.

Governor, I cannot help but agree with you, having been in your State in late spring of last year and witnessed the arrivals, and to see the confusion in U.S. policy about the Cuban entrants.

I wonder if you can share with us any thoughts that you might have, how we could put in place a mechanism to deal with the future possibility of just exactly the same thing reoccurring.

Governor **Graham**. I think there are a number of steps that need to be taken. First is the development of an effective national contingency plan so that, pending the date on which we have an effective permanent immigration policy, we at least have some capacity to respond to the real human needs which arise, such as the experience in 1980 showed.

A lot of time was spent by Federal agencies discussing the legalities of what to do with these arrivals. While that debate was going on, there were human needs of medical care, shelter, and food that were unmet by Federal agencies and therefore became a responsibility of private voluntary agencies, local governments, and the State.

Second would be, as I indicated in my comments to the chairman, a clear message to countries that would violate so blatantly our national sovereignty that we are not going to allow that condition to exist and would be prepared to take effective unilateral action as an indication of our resolve.

Third is the primary task that is before you, which is to develop a permanent national immigration policy that relates to the realities of people's movements today. Just to pick one dimension of that is to have some expedition to the determination of status. I recognize the legitimacy of political refugees. I recognize the tradition of this country to accept those persons who are fleeing political oppression.

The problem that we have is that our current system has virtually broken down in its ability to make that determination. We have had in our State since 1976 something in excess of 40,000 Haitians. As of today, not the first of those 40,000 Haitians has had a status determination.

What that says is that our systems are not functioning, and therefore if you can gain physical presence in the United States you have virtually a license to stay here in perpetuity.

Mr. FISH. You see, I think that, Governor, your State has the potential of being the major beneficiary of what you have just seen the beginning of, a mass exodus from countries in the Caribbean basin. And it is fine to put in place some immigration policy, but that is not the same thing as interdiction or other steps that might be taken.

I do not think that an immigration policy on the part of the United States would make much difference to people coming from countries that have one-twentieth to one-fortieth of the standard of living of the United States. I just do not know myself what might happen in case we have a total repeat of what happened from Cuba a year ago.

Governor GRAHAM. I think there is a series of things that need to be done, some of which are of a crisis intervention nature and some of which are very fundamental. At the crisis intervention level is the necessity for there to be a Federal capacity to respond to the human dimensions of the issue.

And maybe the most fundamental level is to recognize that immigration is a function of a push, because of economic, social, or political conditions in the host country, and the magnetic pull of the United States. There is little that we can do or would want to do to reduce the magnetism of the United States as a desirable place for people to live. In fact, communications improvements are making our standard of living better known and therefore increasing our magnetism.

I do think there are some things that we can do to reduce the push factor from the host country. As an example, we have a great opportunity in a country that had many of the characteristics of Haiti with Jamaica. Jamaica had had a deteriorating economy for 8 years. Each year their gross national product had declined. A great deal of political instability. Now Jamaica has a new government, with good indications that they may be ready to make some fundamental reforms which will add to the long-term stability of that nation.

I believe that it would be a significant part of our national effort to deal with immigration to have an enlightened policy, both governmental policy and a private sector policy, that encouraged the positive things that are happening in Jamaica, both because of what it will mean to that particular country and what it will mean in terms of a signal of U.S. interest and priority on strong, stable free market democratic societies in the Caribbean basin.

Mr. MAZZOLI. The gentleman's time has expired.

The gentleman from Florida, Mr. McCollum.

Mr. MCCOLLUM. Governor, I am glad to hear that you share the views I expressed hearing in the hearings we had several weeks ago, and Congressman Hall did also, that the best way to deal with the problem of these who are here today from Cuba who are in fact deportable and in fact criminals should be to take the necessary step to go through Guantanamo. I am afraid there are not enough listening to us, and I am glad to hear you make that statement today.

I am concerned about a number of the hearing subjects that came up yesterday that I would like to get your views on and perhaps the mayor's and the counties' view on to some extent. One of them concerns the total count on the number of immigrants coming into this country.

Right now the Select Commission is recommending that long immigrants, visa immigrants, be limited to 350,000 per year. They also, however, have many exceptions in the Select Commission report as to total numbers of people who could come in. The refugees are a separate category, that is those that are legally identified, and there is a cap under the refugee proposals in the act.

But those seeking asylum, such as the Cubans in our case, those that we call refugees but really are not technically, are not included under the cap. Spouses and children are not included under the cap, and a number of broader categories are not.

Do you believe—and I will ask this first of the Governor and then to the other two panelists—that we should have a total national cap, a certain number that, regardless of the category, this is the absolute maximum per year allowed into this country?

Governor GRAHAM. I would support an absolute cap, with a provision for a pour-over from 1 year to the next for an emergency situation, which I understand is incorporated in the legislation that has been sponsored by Senator Huddleston and Senator Chiles.

Mr. MCCOLLUM. What about you, Mr. Hanna?

Mayor **Hanna**. Well, the conference has no official policy on that. My personal opinion would be that I would agree with the Governor. I think there should be some kind of an absolute cap, in the sense that no matter how you want to administer this policy, there are just so many immigrants that can be handled at one time and handled properly. You know, even if you fill the bathtub, you have to start with a small nozzle. So no matter how big you want the bathtub to be, there has to be some measured way of letting people in so that it does not just overpower the system of support.

Mr. **McCollum**. Mr. Huber?

Mr. **Huber**. The National Association of Counties has at this point made no decision, definitive decision. However, there are several things which would indicate that unless the Federal Government does provide funds for these refugees, that some type of limitation is necessary. At this point counties are facing a tremendous impact of backlash. Impacted areas are receiving backlash.

For example, in the Los Angeles area, I think the Los Angeles County Board passed legislation prohibiting hospitals from giving service to illegal aliens. In Dade County, I believe 7 years ago there was a referendum on signs published in both English and Spanish. Just recently, I think within this year, there was another referendum, which was a sign of resentment, a sign of this backlash I am talking about, to do away with the signs.

In my own area, there is a tremendous amount of backlash from other minorities because they want housing, they want jobs. And unless something is done, unless some limitation is put on, I really fear the consequences of the backlash.

Mr. **McCollum**. Thank you.

Governor Graham, I would like to pursue another area that the Select Commission is involved with, which particularly affects Florida and agriculture. There is a concern over many of us in Florida, and I know you share it to some degree, with employer sanctions and how it could affect many places, but particularly agriculture.

And our testimony yesterday got into the H-2 program, the possibility of guest workers, and the difficulties of administering the program of employer sanctions with a card out in a field, say in a grove, where you have somebody who is a foreman out there actually screening folks. And how would you get somebody identified? How would an employer be able to identify an undocumented alien or certify that the card was in fact one that was not fraud?

I would like to know, first of all, your judgment, your opinions as to the feasibility of a card in the agricultural area or any other employer sanction; and second, whether or not you agree with the Select Commission's opinion that we should restrict the H-2 program further by requiring the employer to pay social security and unemployment compensation on H-2 workers, which currently they are not and which the Agricultural Employers Association yesterday indicated they oppose.

Governor **Graham**. On the second question, Mr. Congressman, I cannot comment. I do not have sufficient information as to the implications of social security and workman's comp to have a meaningful judgment. I do believe that some form of worker identification as a means of providing a control and being able to enforce sanctions against an employer are desirable.

We have had in our State a positive program of utilization of guest workers, primarily from Jamaica and Barbados, in our sugar cane operations. These are jobs which are very difficult, dangerous, and for which there is relatively little domestic labor competition. The guestworkers from those two island countries have been essentially fulfilling a need that would have gone unfilled but for their presence.

We have in Florida laws which have had as their objective to impose sanctions against an employer who knowingly employs an illegal alien. We have a crew chief registration law through which many migrant laborers work under the supervision of a licensed crew chief and it is the responsibility of that licensed crew chief to verify the status of the persons that are under his employ.

Mr. MAZZOLI. The gentleman's time has expired.

I would like to pursue that same question that the gentleman was on for a moment, and I will yield myself 5 minutes with Mr. Huber, because, apparently, NACo is against guest workers. Is that correct?

Mr. HUBER. Yes. NACo has taken the stand that we oppose the guest worker program and we feel that the guest workers would have the same negative effects on the domestic labor market that illegal aliens have. They would take jobs away from Americans and lower wages.

Mr. MAZZOLI. Now, we used the cane fields in Florida as a point yesterday, that there are no Americans available, that Americans will not do that work. And I just wondered—and this may be outside your field—whether you are familiar with any possibility that in using guest workers it would be to fill jobs that could not be filled by Americans? Has that come before NACo?

Mr. GIBBS. Mr. Chairman, if I might respond. I think before we would go to any type of massive or nationwide guest worker program, we should begin with small scale pilot projects. In the agricultural area we are aware of specific problems with harvesting crops in certain areas of the country and the need for short-term labor.

There would be a great deal of opposition by border counties such as El Paso and San Diego if a massive guest worker program was established immediately.

Mr. MAZZOLI. Well, we were out there. There might be some who do feel strongly, but there were some who apparently thought that a kind of guest worker program, an enhancement of the H-2 but beyond what the Commission has recommended, might be one facet of a multifaceted approach.

I do not think we are looking at any one of these in isolation as the only answer. We are talking about border enforcement. We are talking about interior enforcement. We are talking about employer sanctions. I would like to pursue this again with NACo. Apparently you are also against the use of any kind of identification card or worker identification.

Mr. HUBER. Yes. We are opposed to this, basically for the reason that it could be a threat to civil liberties and could be a discrimination developing against——

Mr. MAZZOLI. I wonder if it is a worse threat to have a card than to work in a sweatshop or to be paid exploitation type wages, which we have heard is one of the other situations which develops when employers are in the habit of hiring these people in some cases and not doing right by them.

I wonder if by having a card, which then gives the employers nothing to argue about—they then should be subject to severe sanctions for knowingly hiring an undocumented worker—it puts them in a position where they cannot do some of the things they are doing today. So I wonder if NACo might consider that or if it did consider it in making this opinion or judgment.

Would you know how the judgment was arrived at?

Mr. **Gibbs**. The NACo task force debated the issue at great length, and the Hispanic elected officials within our organization have been opposed to a worker ID card. Civil rights concerns are important qualifications that we have integrated into our position on employer sanctions. We will raise your position to our members at the next meeting.

Mr. **Mazzoli**. Well, you make your own mind up, but there has been some material put in the record in the last few days—yesterday Father Hesburgh talked at length about the use of a kind of card, perhaps the social security card, noncounterfeitable—that it might be worthwhile your taking a look at. There has been a certain amount of discussion of the state of the art that has come in.

Mr. Hanna, you talked about impact aid, and you thought that might be an interesting proposal. My time is about to expire, but for about a minute or so would you give me some ideas? Perhaps focus on a method to help the counties and cities which are impacted, without just throwing more money around, which may not be the most efficient use of it.

Mayor **Hanna**. Well, I think we definitely support the idea of impact aid, but we do not think it should go to everybody. We think it should go to those areas that really are being impacted.

Furthermore, we think that as a——

Mr. **Mazzoli**. Excuse me. If you do not have it today, maybe the U.S. National Conference of Mayors could develop a formula. How would you determine impaction? If you could supply that, we would be very appreciative of it.

Mayor **Hanna**. We would be happy to provide that for the record at a later time, Mr. Chairman.

But one thing, a derivative of the need for impact aid, is that where we failed, where the Federal Government has failed, is in providing an equitable distribution of these people around the country. I mean, the Governor of Florida has certainly a much greater problem than the Governors of most States. And I do not see why we do not try to allocate these people all around the country.

I think that as long as it is equitable, I do not believe you are going to find any area of the country that is not willing to do its part. But I can understand why no area wants to have just singularly, unusual burdens placed on it.

Mr. **Mazzoli**. My time has expired. All of us who went to California heard so much about what they call secondary migration, which occurs because of the climate and the fact, that so many of their countrymen are already there. There is an additional lure to get them from Minnesota and Kentucky and everywhere else to California and to Florida. So it is a problem.

Now, having returned, and we thank him for his continued effort, the gentleman from Wyoming, our cochairman is recognized.

Senator SIMPSON. Finding your way through the subterranean caverns, where it says "SB" here it means "subbasement" and over there it means "subway"—well, I finally made my way back.

Now let me, Mr. Chairman, if I may, enter into the record a statement that was presented to me by one of my colleagues, and I would hope that it would appear prior to my remarks, a statement of Senator Hawkins of Florida.

Mr. MAZZOLI. Without objection, so ordered.

[The prepared statement of Senator Hawkins follows:]

PREPARED STATEMENT OF SENATOR PAULA HAWKINS

Senator Simpson, Representative Mazzoli, distinguished committee members, thank you for giving me the opportunity to submit this statement.

Governor Graham, I would also like to thank you for your comments and suggestions. It's always a pleasure and a privilege to hear from my fellow Floridians.

Since there are presently in the United States between 3 million and 8 million illegal aliens, this is an area of concern for all Americans. However, because of the high concentration of refugees in south Florida, this problem is a particular concern to Floridians.

Governor Graham, I have had the opportunity to review the written text of your prepared statement in which you emphasized the need for a comprehensive contingency plan to deal with future Mariel-type problems.

Please let me take this opportunity to assure you and all Floridians that my staff and I are working closely with the White House on this issue and that we anticipate legislation being submitted to the Congress this summer which will form the basis of such a contingency plan.

In all likelihood, the plan would be centered around the following proposals:

1. Criminal penalties for boat owners who bring aliens into the country.
2. The seizure of boats from those who fail to pay the fines imposed upon them for violating U.S. immigration laws.
3. Preventing, during an emergency situation such as existed during the Mariel boatlift, small private vessels from leaving south Florida to go to foreign countries.
4. Stopping vessels in international waters to determine if there is evidence of an attempt to violate U.S. immigration laws. If so, the vessel would not be permitted to enter U.S. waters.
5. Strict enforcement of all U.S. immigration laws.

As you indicated in your statement, the sudden influx of Cubans in the Mariel boatlift proved to be an absolute disaster for the national administration, because it showed that we had no national policy to deal with the problem.

I am confident that the legislation that will be submitted to the Congress this summer will help provide us with a national plan so that the present administration is more prepared to deal with this problem than was the last administration.

Senator SIMPSON. With regard to local elected officials, you frequently state that refugee policies are within the Federal jurisdiction or purview, and therefore the Federal Government should bear the cost of refugee resettlement and even long-term maintenance. Given the fact that at least the vast majority of refugees do adjust to U.S. society and become economically self-sufficient and contributing members of the community, at what point should Federal fiscal responsibility end and State and community responsibility begin for certain refugees who may never become self-sufficient?

I ask that of Mr. Huber.

Mr. HUBER. Well, let me say first of all, Senator, that, as far as refugees becoming self-sufficient, I have some statistics here, and I will be glad to furnish you with a copy of this, which shows that from September 1975 there was 11.8 percent of the refugee population receiving cash assistance, and in August 1980 there was 45.4 percent of this population receiving cash assistance. That seems to indicate that there is a tendency for these people not to become self-sufficient, but to start to rely on this cash assistance.

So I think that assuming that these people are naturally becoming self-sufficient is a false assumption.

Senator **Simpson**. I understand your presentation of those figures. But we will be dealing with the issue somewhere in the course of our deliberations as to at what point Federal responsibility ends in the situation, if ever. Surely it does. And I think we are told continually that is a Federal problem. But I do not know that Federal permanent involvement is realistic. I guess that is where I am.

Mr. **Gibbs**. Mr. Chairman, this is a very difficult question to respond to and one that our association has debated at great length. The issue is that every refugee population is different. The Hmong tribe that has come in from the central highlands of Vietnam are very different from the Soviet refugees, and they all come into this country with varying levels of English, employable skills, and so forth.

Therefore, it is difficult to generalize about a specific deadline by which all refugees can become self-sufficient. Some may require 12 months to become self-sufficient while others may require 48.

A major concern to us is that some type of targeted assistance formula be developed in the area of social services, employment, and other impacted services that are necessary for refugees to become self-sufficient.

Senator **Simpson**. Thank you. I appreciate having your response.

Governor, you and I have had the opportunity to visit briefly and I have enjoyed that in the past. I know of your deep feeling in this area. Your statement was rather a powerful one in every sense.

Let me ask you: I would be most interested in what I have seen as a change and shift in attitude of the Select Commission as we dealt with this extraordinary issue. When you first present the facts to groups of people without the facts and watch their first response, which is, no, we cannot go for that, or yes, we can go for that, and then after processing the information they suddenly say, wait a minute, I see where we are going or what we have to do.

Could you just briefly tell me of any change in attitudes that you might have had since the beginning of this and where you are now? Where have been the signposts along the way for you as you have reached this very strong position?

Governor **Graham**. You have to look at the world as a series of options, one of which is the maintenance of the status quo. There is a temptation to succumb to the inertia of doing tomorrow what you did yesterday because it is the easy thing to do. And I believe that the application of that theory to this problem is a very common one.

I have come to see the pragmatic implications of the acceptance of that status quo, what it does, for instance, in terms of increasing levels of criminality in a community, increasing levels of human discord where there had been harmony, what it does in terms of sending messages external to the United States that make us even more vulnerable to those types of illegal action in the future.

Those experiences have led me to feel that we have got to have a national immigration policy that is firm, fair, and enforceable. And I think that is the fundamental task of this committee.

Senator SIMPSON. Indeed it is. And I think that a majority of us feel that the three key steps—and they must come together or we will have nothing—are increased enforcement both at our borders and internally—some form of employer sanctions, and some type of secure, counterfeit-resistant identification system.

We could come out of a long couple of years and say that we got one of those or two of those and we will not have solved the problem in my mind. Do you share that view?

Governor GRAHAM. I would agree with that. And I understand that there has now been legislation introduced which would establish some of the more specific standards of that, including the use of a social security card as a basis of that identification, which seems to me to be an eminently reasonable place to start in terms of that goal.

Senator SIMPSON. That is an interesting one that we are going to pursue, and that is we know of the great misuse of the social security card. You can purchase one anywhere in the country for 20 or 30 bucks and when you have one, you are in business. So that is one of the things that we will pursue as we get to some kind of system of identification, and none of us are set on what that would be.

One other question of Mr. Huber or your organization. Your organization advocates that the Federal Government establish a fair share formula for the distribution of refugees nationwide. Now I may be repetitive in my questioning here, because I heard Chairman Mazzoli speak of secondary migration, which is a very real issue and one that we perceive with great interest.

So these refugee arrivals also move from the area of initial resettlement. What incentives could be developed to encourage a wider dispersal of refugees and to counter the tendency toward this secondary migration which we find so curious but real?

Mr. GIBBS. If I might answer, Mr. Chairman, one of the things that we have looked to in working with the U.S. Coordinator's Office is to develop a comprehensive and coordinated strategy for refugee resettlement within this country, because there really is not one at the present time. The process is left to the voluntary agencies in New York to sit down through their statewide network to resettle refugees within the United States, which I think has worked well in the past.

But at this juncture there is a need to look at coordination with local elected officials and to consider unemployment, housing availability, school availability in areas where refugees are resettled. We are very aware that 80 percent of refugees are family reunification. But there is 20 percent where it is possible to find certain areas of the country that would be more acceptable for resettlement.

The Cambodian project is an example where the State Department is attempting to resettle 50,000 Cambodians by considering economic and social conditions in localities. The problem is that the local elected officials, the mayors and county people, have not been consulted and there is a possibility of moving 500 to 1,000 Cambodians into an area without proper notification.

Senator **SIMPSON**. Thank you, Mr. Chairman.

Mr. **MAZZOLI**. The gentleman from California, Mr. Lungren, is recognized for 5 minutes.

Mr. **LUNGREN**. Thank you, Mr. Chairman.

I would like to go at the question of the Federal responsibility here slightly differently than we did a minute ago, and that is, acknowledging that the Federal Government maybe did not do as good a job as it could have done, at least in hindsight we can say that, in resettling people or dispersing them throughout the country, and acknowledging that maybe now we are doing a little bit better job of that, recognizing that is a difficulty, we still have the phenomenon of secondary migration, which is that regardless of where you resettle people they are going to go where they want to go. Our Constitution allows that. And as a result, a very few States can end up with 70 percent of all the refugees that have come in from Southeast Asia.

That is where I think, in terms of looking at a Federal responsibility, at least in my mind, it becomes a little bit clearer, where you have an area that, like a county in my particular area, has 10 percent—or 1 percent of the population of the United States and has 10 percent of all the Southeast Asian refugees. You get a little bit of an idea why, if we just let the States and localities bear the burden at a time when we do not really have facts to suggest that they have had a reasonable period of time in which to get these people off welfare assistance, we are asking local communities to accept too great a burden.

Having said that, let me move on to another subject, and I would like to ask this of Governor Graham. Obviously you have been very concerned about the fact that we had what I would suggest is a lack of immigration policy in this country for some period of time and were wholly unprepared to deal with the Cuban situation of this last year. I would just ask you what suggestions you have to guide the Federal Government in the happenstance that Fidel Castro decided that he would send another 100,000 people to the shores of Florida.

Governor **GRAHAM**. I have responded to a similar question earlier, and I believe that there are basically the following steps: One, ideally we should attempt to reach some type of a bilateral accord with Castro which would include the question of disposition of those persons who would have been excludable, either because of their condition or status at initial entry or because of their actions since they have been in the United States.

And second, part of that would be a consideration of what would be U.S. policy toward family reunification of persons from Cuba. We had a very successful and effective program from the mid-1960's until the early 1970's through the freedom flights, through which in an orderly manner, with appropriate screening while the person was still in Cuba, many thousands of persons entered this country and have become very positive contributing members of our State.

Second, I would say that we must have an effective Federal contingency plan to provide for the real human needs in a wave similar to the Mariel boatlift imposed should that be imposed again.

Third, we must be prepared to identify and exclude those persons who fall into the category of social deviants and would not have been acceptable into our country had they come through a normal processing period. I think that we created an incentive for Castro to engage in his actions last summer and a potential lingering incentive to do so in the future by the way in which we placidly accepted those persons that he very consciously unloaded on the United States.

Mr. **Lungren**. In response to that, I have a couple of questions. One is, I would share your hope that we could get some cooperation. Based on recent history, it kind of seems doubtful that we can. And in the absence of that, what would you suggest from your perspective that we do with people that we identify as socially unacceptable?

I mean, I think that is a tough question. I do not think there is an easy answer. I would just like to know what you feel about that.

Governor **Graham**. Accepting the premise that there are no easy answers and none of the alternatives are free of the potential of risk and confrontation, my own recommendation would be to identify those persons and return them back to Cuba through the U.S. naval base at Guantanamo.

Mr. **Lungren**. And they will accept that? Well, we can see.

One last question on this. In terms of overall immigration policy, in terms of the possibility of having large numbers of people coming from Cuba or a similar country in the future, would you include those within the overall numbers that we establish to be accepted in any one particular year? Would you exclude them from the total number? Or would you have some flexibility built into the law so that we could allow an additional number if something like this occurred in the future?

Governor **Graham**. As I understand, the Huddleston-Chiles bill that has been introduced in the Senate will provide for an absolute cap, but with provisions for pour over from 1 year to the next in the event of an emergency situation. I would support that concept.

Mr. **Lungren**. In terms of the total number of people to be allowed in?

Governor **Graham**. Yes.

Mr. **Mazzoli**. The gentleman's time has expired.

We welcome the Senator from Massachusetts and recognize him for 5 minutes.

Senator **Kennedy**. Thank you very much, Mr. Chairman. I want to welcome our panel and I regret I was not here for your earlier presentation.

One of the very complicated issues that we are going to be dealing with is the adjustment of status of undocumented aliens who are already here. And I understand, Governor, that you had mentioned we ought to move toward adjusting the status of many of the Cubans that have come here and also the Haitians. Am I correct in that understanding?

Governor **Graham**. Right.

Senator **Kennedy**. Would you also adjust the status of undocumented aliens that have come in from Mexico, who are also here like the Cubans?

Governor **Graham**. Yes. I think we need to have an administrative judicial process by which, within a reasonable period of time, status can be determined and therefore a decision made as to whether this individual is going to be allowed a permanent residence in the United States or will be excluded.

Senator **Kennedy**. Up to what period of time? Would you make it up to the current time? The Select Commission report talks about, I guess it is, January 1980. Would you be for, then, a general amnesty up to January 1980?

Governor **Graham**. No.

Senator **Kennedy**. What year would it be for?

Governor **Graham**. I would not personally favor a general amnesty. I would favor establishing a procedure by which determinations can be made on an individual basis as to whether these persons are qualified for permanent residence. And I think this is particularly true because we know that in the Mariel boatlift there were substantial numbers of persons who were purposefully dumped on the United States, and I do not believe that we can accept a policy that says that they will be permanently accepted.

Senator **Kennedy**. Well, outside of those I guess that you call socially unacceptable, I suppose those that have, a criminal record on some kind of infractions of the law, then do you support a general amnesty for those outside of that category?

Governor **Graham**. I would support a case-by-case determination as to whether the individuals are eligible for permanent status in the United States.

Senator **Kennedy**. Well, what about an undocumented worker that is working on a tomato farm in Orange County, versus a Cuban that is working in a shop in Miami? What are the differences? What criterion are you going to give to us?

Governor **Graham**. The standard we have used in past is basically the determination of whether the person is here because of a legitimate fear of political persecution and therefore qualifies as a political refugee, as contrasted with a person who is here out of essentially economic reasons, who is not entitled to permanent status in the United States without proceeding through the normal immigration policies.

Senator **Kennedy**. You do not think that was true about Nureyev, do you, the Russian dancer? You do not think it was true about the dancers, the Soviet athletes that come here? Do you think they are in danger of risking their lives if they go back to the Soviet Union?

Governor **Graham**. I cannot speak to those individual cases. But it has been the policy of the United States up until fairly recently to assume that persons who came from a Communist-dominated country were presumed to be seeking political refugee status. It is my understanding that that was changed in the immigration law which went into effect April 1 of 1980, which was part of the complexity dealing with the Mariel boat people.

Senator **Kennedy**. That is true, we changed it to the U.N. definition in terms of the refugees. But I am not talking about people arriving here, but those already here for some years. I am just trying to get from you whether you think we should be treating undocumented aliens the same way as we treat Cubans and the same way we treat Haitians, whether we are going to be one country with one way of dealing with these problems or whether you draw a distinction. And that is the real issue.

Governor **GRAHAM**. One of the principles that I believe was critical during the height of the situation in the midpart of 1980 and should continue as a fundamental principle is that we treat all people who come from similar backgrounds equitably. That is, we do not have a different policy for one nationality or another.

The standard for eligibility for permanent residence in the United States should be a consistent standard applied against the individual circumstances of the person seeking permanent residence, not vary from country to country.

Senator **KENNEDY**. So finally, whatever adjustment we made for the Cubans we also ought to make for the Hispanics and for the Haitians?

Governor **GRAHAM**. We should have a policy which treats persons of similar factual status similarly.

Mr. **MAZZOLI**. The gentleman's time has expired.

The gentlelady from Colorado, Mrs. Schroeder, is recognized for 5 minutes.

Mrs. **SCHROEDER**. Thank you, Mr. Chairman. And I also apologize for not having been here for all of the testimony, and I appreciate having this panel here.

I know the Governor has had a tremendous amount of experience with this, and I think any light he can shed for us would certainly be helpful.

It is easy to attack the Federal Government for what they did or did not do. But I question whether there has not been almost a conscious attempt by the Federal Government not to deal with the problem. Would you say that is true?

There has been a tendency not to listen to what the director wants or to cut personnel slots at INS so that they do not have the people to handle the problem. We do not seem to be really focused on it up here. There does not seem to be any coordination with the State Department, from my vantage point.

We have the awful problem of what happens if you determine that people are not eligible for residency here and their country will not take them back. What can the State Department do? It is easy to say we should have some bilateral agreements with Cuba, but I do not think we are going to have them.

How do we get a more coordinated Federal focus? I have a feeling that everybody here is afraid to touch it for fear it might stick to them and when anything goes wrong they are going to get blamed for it. It is like the Postal Service reform. Nobody can remember who wrote that bill.

Governor **GRAHAM**. Well, in my office in Tallahassee I have a poster which is a quotation from the theologian Harvey Cox: "Not to decide is to decide." It is in fact not correct to say that we do not have a Federal immigration policy. We have a Federal immigration policy, which has all of the characteristics that you have just described.

The question which you have got to determine is is that acceptable, the continuation of the status quo, or do you want to shape a different option. I hope you elect to shape a different option.

Mrs. SCHROEDER. Well, I come from a state that has seen a lot of the impact, as yours has, and one of the problems that we have discovered is that if you have good programs and work very hard to help the refugees, you only encourage secondary migration. Do you find that?

Governor GRAHAM. Yes. And our State is a major magnet of that secondary migration. There was a question asked a few minutes ago about what could be done to deal with that issue, and it is a very difficult one, because there are cultural affinities, linguistic, a family, that creates that magnetic pull.

I think there are some things that can be done. One would be that there should be no permanent processing centers located in the areas that are likely to be the primary magnets for secondary migration. As an example of policy which violates that rule, there is currently in the south Dade area a processing center for Haitian refugees. My information is that virtually all of the refugees who are resettled out of that center are resettled into the Miami area, because that is the easiest place for that resettlement to occur.

The consequence of that is that an already supersaturated community is further saturated. If that processing center were located somewhere else, I would suggest that a substantially smaller percentage of the people would be resettled in Miami.

Mrs. SCHROEDER. I would not be too optimistic about that. I am from a State that is a little bit different, but we found that bus tickets are very cheap.

Governor GRAHAM. A second question relative to this is the issue of what is a family for purposes of reunification. When the waves began to arrive last spring, we were told that the definition of a family would be very tightly drawn to include spouses, children, mothers, and fathers.

It is now our information that in fact families are being defined in a much broader context, even including a guardian status that is not family related, and that in part because of that the duration, the life expectancy of placements with supposedly reunified families is very short. We are experiencing a high percentage of family reunifications which last for 30 days or less.

Mrs. SCHROEDER. I guess my time is up.

Mr. MAZZOLI. The gentlelady's time has expired. And I am afraid that all time has expired now for the panel. We want to thank you gentlemen.

Did the gentleman have a further question?

Mr. MCCOLLUM. I did want to ask one thing. The Governor was not able to respond on the H-2 question of employer restrictions and so on. And I would appreciate it, for the benefit of our whole panel, and giving you time to study the problem, if you would have your staff research it and give us your opinion in due course on whether or not the State of Florida, at least from your office, believes that we should restrict the H-2 program further, as the Select Commission suggests, or perhaps we should expand it in light of the possibilities or probabilities of some employer sanctions that might or might not create a demand for an increased expansion of that and the guestworker program.

I would also, given the discretion of the Chair, like to comment that in a recent trip I took to California with the rest of my subcommittee and Mr. Mazzoli and the crew, we noted that much of the problems in California—and I am comparing this to Florida in questioning—centered on the areas of delivering English to these refugees out there—they were the Indochinese ones—and getting these skills and getting them into the job market.

And of course, the same seems to be true to a large extent with the great impact of Cubans and Haitians in Florida. And it was not so much a lack of funding in the long term out there which was a problem, but really the inflexibility of the delivery systems of the State and local governments and the education system; not just a lack of coordination, but inflexibility and apparently inability to get the message down, the right method of teaching and so on.

I am wondering if the Governor has noted the same problem in Florida and if he has any suggestions, either today or perhaps in writing, to us as to how we might help assist in rectifying that, outside of the funding problem itself.

Governor **Graham**. I would like to supplement my remarks with a written response to both of the questions you have asked. But to comment on the second question briefly, the primary impact area in terms of education has been the Dade County school system. Over the past 20 years, the system has developed considerable expertise in English as a second language and I think has demonstrated a very strong capability of providing linquistic skills to the non-English speaking child.

This latest group of refugee children, however, present some especially difficult problems because of the discriminating nature of some of the placements, that is, where children who were selected because they had exceptionalities, retardation or otherwise, were specifically placed on the boats that came. So a higher than expected, by a substantial number, of children with not just linguistic problems but also handicaps and learning disabilities has been placed into the school system, which imposes an additional burden on the efforts to bring these children to a point of assimilation.

Mr. **McCollum**. Thank you.

Mr. **Mazzoli**. I thank the gentleman. And thank you, panel, very much. We appreciate your help.

The second panel for this afternoon will be composed of Mr. Norman Kee, chairman of the Task Force on Immigration and Refugee Policy of the United States-Asia Institute; Ms. Althea Simmons, director of the Washington Office, National Association for the Advancement of Colored People; and Ms. Vilma Martinez, president and general counsel, Mexican-American Legal Defense and Educational Fund.

If the panel is able to proceed on this basis, I understand that Senator Kennedy has a conflict. He would like to hear, if he could, the testimony of Ms. Martinez, and then I believe that the Senator has some questions, and he will have to leave. If that is all right with the panelists, then we will do that.

Ms. Martinez, then, if you would proceed for the 5 minutes, and then the Senator can proceed with his questions and then go to his other business.

STATEMENT OF VILMA MARTINEZ, PRESIDENT AND GENERAL COUNSEL, MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND

Ms. Martinez. Thank you very much.

On behalf of the Mexican American Legal Defense and Educational Fund, the League of United Latin American Citizens, the National Council of La Raza, and the other Hispanic organizations listed here, I would like to respond to some of the Select Commission's recommendations on immigration and I would like to make some alternative recommendations, because the outcome of the hotly debated subject of U.S. immigration policy during the 1980's will be critical to the civil rights of Mexican Americans and other Hispanics, and indeed other Americans.

Specifically, I would like to discuss two widely debated proposals which purport to address the undocumented worker issue, employer sanctions and guestworker programs. The Select Commission voted to recommend employer sanctions, but not a guestworker program. MALDEF and the other Hispanic organizations oppose both employer sanctions and guestworker programs. We want to share with you our reasons and urge you to reject both proposals.

The elusive national commitment to equal employment opportunity is a dream that is only beginning to be realized by minorities in many sectors of the U.S. economy. Proposed employer sanctions threaten that national commitment and do so in order to implement a regulatory scheme that can neither function fairly or effectively nor accomplish its principal objective of controlling illegal immigration.

For Mexican Americans and other Americans who share the physical characteristics of persons thought to be undocumented, employer sanctions will exacerbate existing patterns of employment discrimination. Well-meaning employers, fearful of Government sanctions, will shy away from hiring us. Racist or biased employers will simply use the fear of sanctions as an excuse to avoid hiring us. At the very least, employers untrained in intricate immigration laws are unlikely to err in their assessment of who is undocumented.

We also oppose guestworker programs because they are unfair to the workers; they erode the opportunities and status of Mexican Americans; and they would ultimately fail in their purpose of stemming the flow of undocumented workers into the country.

In the bracero program of the 1940's to the 1960's, Mexican workers were abused by employers who held, by contract, entire control over the workers' ability to remain and work in the United States. Although the Mexican Government had negotiated substantial labor rights for the workers, there was virtually no attempt to enforce these assurances. Nor is the European experience with guestworker programs any more reassuring.

MALDEF proposes instead four specific immigration policy proposals and a constructive search for solutions in a broader framework. The four specific immigration policy recommendations are:

Recognizing and expanding the traditional family reunification policy which underlies U.S. immigration law;

Second, eliminating or greatly increasing the per-country limitation of 20,000 visas per year for Mexico;

Three, adjusting the status of undocumented workers who have equities in our society to permanent resident alien status; and

Four, assuring the fair and nondiscriminatory administration of immigration law by INS, with emphasis as well on service functions.

In closing, I want to suggest a constructive solution to the problems labeled "immigration problems." Although we lack much basic information about the undocumented population, popular opinion has not hesitated to scapegoat it for many of our hard economic and social problems. It is widely assumed, without much evidence, that undocumented workers displace American domestic workers, that they contribute to the decline of the economy, that they are heavy users of U.S. social services, and that they contribute in large part to U.S. environmental and energy problems.

But as Douglas Massey of the Office of Population Research at Princeton states, and I quote:

> The best evidence shows that the United States is not being inundated by an out of control "invasion" of illegal immigrants; nor is it likely that illegal aliens represent a burden to taxpayers; nor is there any clear evidence to indicate that on balance illegal aliens displace American workers.

The negative and emotional tenor of the current immigration debate is reflected in an assumption that we confront a problem which is out of control. This tone pervades the Select Commission's report and sets the national stage for narrow enforcement measures which are doomed to failure since relying primarily on an enforcement solution to the problem cannot stop a phenomenon which is in response to powerful human, economic, and demographic forces and cannot address a problem which transcends immigration issues.

But misleading public opinion and enacting policy based on that unfounded opinion is scapegoating, and furthermore conceals the hard problems and adoption of realistic remedies. We must act and legislate constructively, not expediently. And in acting, we must recognize that the solutions we seek are to be found in a framework broader than immigration.

To the concern for more jobs and reducing unemployment, we say the real question is why our economy has failed to produce enough jobs to engage the productive capacity of our people, a failure caused by far more basic forces than the recent flow of undocumented workers to jobs shunned by domestic workers. We need constructive responses to the real economic problems, particularly the need to increase job creation and industrial productivity and to assure sufficient workers to meet labor needs and to support our growing retirement population.

We need equal educational opportunities, effective prohibition of employment discrimination, and equal treatment of all persons by government. These are the basic problems, the basic goals that have existed since before we became concerned about immigration and immigration policy. They will remain with us no matter how we shape our immigration policy. By effectively addressing these issues, our country can maintain a sound economic and social condition and put the issue of immigration into a reasoned perspective.

Thank you very much.

[The prepared statement of Ms. Martinez follows:]

Prepared Statement of Ms. Vilma S. Martinez

My name is Vilma S. Martinez. I am President and General Counsel of the Mexican American Legal Defense and Educational Fund, Inc. I wish to thank the Committee for permitting me to testify as a representative of the Hispanic community on one of the most crucial issues confronting us today, U.S. immigration policy, and on the report of the Select Commission on Immigration and Refugee Policy.

MALDEF has followed the work of the Select Commission since the time of its inception. We are a non-profit legal organization working to protect the civil rights of Hispanics in the United States. We are deeply concerned with debates about immigration and immigrant workers, in large part because the resolution of those debates will greatly affect the rights and aspirations of Americans of Mexican and other Hispanic descent. From that perspective, I offer the following comments on U.S. immigration policy.

U.S. IMMIGRATION POLICY

I. Introduction

A. Unjustified assumption that undermine Hispanics' civil rights.—The outcome of the hotly debated subject of U.S. immigration policy during the 1980's will be critical to the civil rights of Mexican Americans and other Hispanics. A national commission, the Select Commission on Immigration and Refugee Policy (SCIRP), recently submitted its recommendations to the President and the Congress after a two year study of the issues. The Commission's report fails to reflect any consensus on immigration issues and some of its major recommendations appear to be deliberately vague, but it is likely to intensify the debate over national immigration policy.

The national immigration policy debate centers on the presence of an unknown but large number of undocumented aliens [1] who are present in the United States.[2] The issues addressed in this debate have been fundamentally miscast, due to the lack of reliable information about undocumented aliens and more than a little prejudice against foreigners, especially those who are members of racial minorities. For United States policy to reach rational productive conclusions, it must first address the real issues in an objective manner. Widespread concern about the economic and social situation in the United States has been, translated—and, in the American tradition of scapegoating recent immigrants, manipulated—into a popular perception that undocumented aliens are a severe "problem" which adversely affects our country. A more productive approach, and one more consistent with the evidence that undocumented workers give much to our economy and take little from it, is to regard this immigration as a challenge to be met by measures to harness this human energy to the task of revitalizing our economy. In our country's history immigrants have been one of our greatest assets, and we must not let impulses of nativism and prejudice blind us to the opportunity presented to us by this generation of immigrants.

The negative and emotional tenor of the current immigration debate is reflected in an assumption that we confront a "problem" which is "out of control." This tone pervades the Select Commission's report. That approach will not lead us to constructive responses to the real, economic problems which our country faces, particularly the need to increase job creation and industrial productivity and to assure sufficient workers both to meet labor needs and to support our growing retirement population. Moreover, that approach creates a political, social, and economic environment which is extremely threatening for Mexican Americans and other national origin minorities who may become victims of a "backlash" against new immigrants.

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[1] An undocumeted immigrant is an immigrant who has either entered the U.S. surreptitiously or has overstayed a valid visa. The term "illegal alien" is sometimes used by the public, but such a term is both derogatory and inaccurate, since legality of residence can only be determined by the Immigration Service after a hearing before an immigration judge has taken place. Furthermore, there are many undocument immigrants who are documentable, but for the failure of the Immigration Service to perform its service functions—as opposed to its "police" functions—adequately.

[2] The Select Commission estimates that there are about 3.5 to 5 million undocumented persons in the United States, the great majority of them workers, and less than half of whom are of Mexican origin.

MALDEF's basic concern about U.S. immigration policy is that it often has serious civil rights consequences for the U.S. Hispanic population. There are 14.6 million Hispanics in the United States living and working alongside the undocumented population. They are often indistinguishable in appearance from the undocumented. Our enjoyment of the legal and constitutional rights guaranteed to all Americans are to a great extent dependent on the way our legal, political, and social institutions react to the undocumented. For example, "Operation Wetback" in 1954 resulted in the deportation of many U.S. citizens of Mexican ancestry as well as undocumented workers. Currently, workplace and residential raids conducted by the INS sweep citizens as well as lawfully admitted permanent resident aliens and the undocumented into their net, and create chaos and anger in Mexican American communities. Because of these policies and proposals for other enforcement measures, immigration policy is, for Hispanics, the major civil rights issue of the 1980's.

B. Scapegoating the undocumented.—Although we lack much basic information about the undocumented population, popular opinion has not hesitated to blame it for many of our hard economic and social problems. It is widely assumed, without much evidence, that undocumented workers displace American domestic workers, that they contribute to the decline of the U.S. economy, that they are heavy users of U.S. social services, that they contribute in large part to U.S. environmental and energy problems. These misperceptions are not only shown by recent research to be wrong as a matter of fact, but they are often inspired or exacerbated by racial and nativist prejudice against Mexican immigrants. This scapegoating is not only unfair to undocumented workers, but impedes the formulation of rational policy by diverting attention from the real issues.

The truth is that immigrant workers have for generations been a boon to the economic development of the Southwest, and are potentially a rich source of future development there and across the country. Attracted by the needs of the U.S. economy for low-skilled (and low-paid) labor, first Asian and later Mexican workers have for generations been brought to the Southwest as a ready and expendable source of labor. Immigrant workers are a no less necessary element of our economic expansion today. Indeed, the intermitten labor shortage of past decades now threatens to become a permanent large-scale shortage, because of declining U.S. birth rates and rising levels of education and aspiration. Economists predict a domestic labor shortage of 15-30 million workers by the end of the century, which probably can only be met by foreign labor sources.[3]

Immigrant workers have economic characteristics which are highly desirable for the U.S. economy with its growth and productivity problems. Those workers labor hard, often under undesirable conditions, pay taxes to local, state, and federal governments, are young, and rarely use social services. In the face of these facts, the propensity to scapegoat undocumented workers for our country's difficult economic and environmental problems must be ascribed to the vulnerable position of undocumented workers, the economic ills confronting our nation, and longstanding strains of nativism and racism in our society. Undocumented workers provide a highly visible, deceptively simple target for most Americans, they do not "look like us", and they seem understandable, unlike the frustratingly complex economic forces which we have been unable to control or even comprehend. We can succeed in inflaming opinion against undocumented workers because they are (incorrectly) seen as mostly Mexicans, because they are a powerless and voiceless minority without legal protections, because they have no access to opinion makers or political leaders, and because the public has been kept ignorant of the workers' contribution to the American economy. But misleading public opinion and enacting policy based on that unfounded opinion will only conceal the hard problems and further postpone adoption of realistic remedies. We must act—and legislate—constructively, not expediently.

II. Critique of discriminatory and unworkable proposals to "control" immigration

Among the wide range of immigration policy proposals advanced for discussion,[4] the most seriously considered and widely debated are two programs which purport to address the undocumented worker issue—employer sanctions and "guest worker" programs. Both proposals are seen as ways to limit the number of immigrant workers and restrict the terms and conditions under they may work. Both proposals raise subsidiary issues of enforcement techniques and implementation procedures; these issues also receive wide attention. Critical, realistic scrutiny of these two proposals has been largely lost in a debate that has been heavily emotional. We believe that under such scrutiny both employer sanctions and proposed guest worker programs must be rejected as both discriminatory and unworkable.

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[3] Projections of U.S. labor supply for the 1980's and 1990's show that U.S. businesses which now employ young low-skilled males are likely to be faced with shortages of workers by the mid-1980s, and that this condition of labor scarcity will persist for the remainder of this century and beyond, due to the depressed birth rate and rising educational and aspirational levels among the U.S. population. The United States may need as many as 15–30 million immigrant workers in its labor force by the year 2000, if the U.S. economy is to continue to grow at even a moderate rate.

[4] Proposals range from an "open borders" policy welcoming all immigrants to a complete cut-off of many categories of immigration, and every point in between.

A. *Employer sanctions.*—The elusive national commitment to equal employment opportunity is a dream that is only beginning to be realized by minorities in many sectors of the U.S. economy. Proposed employer sanctions programs would threaten that national commitment and would do so in order to implement a regulatory scheme that cannot function fairly or effectively and will not accomplish its principal objective of controlling illegal immigration. Under an employer sanctions scheme, discrimination against Mexican Americans and other minorities would be increased, and no other legitimate policy objectives would be attained.

The Select Commission has recommended that it be made unlawful for employers to hire undocumented workers, and that employers be given the obligation to determine the status of potential workers. Necessarily, enforcement of this scheme requires use of some form of "secure identification" for employers to demand and rely on, which the Commission also recommended by a closely divided vote, and some federal review and regulation of enforcement efforts. This program and its variants should be rejected because each of its elements—deputizing employers as immigration law enforcement agencies; creation, use and control of identification documents; and a regulatory federal enforcement scheme—will trigger discrimination and will prove burdensome and unworkable.

For Mexican Americans and other Americans who share the physical characteristics of persons thought to constitute the bulk of the undocumented population, employer sanctions will undoubtedly exacerbate existing patterns of employment discrimination.[5] Well-meaning employers, fearful of government sanctions, will shy away from hiring individuals who appear "foreign". Racist or biased employers will simply use the "fear" of sanctions as an excuse to avoid hiring qualified minorities. At the very least, employers untrained and inexperienced in the intricate immigration laws are likely to err in their assessment of who is undocumented.[5A]

Minorities will not be protected from discrimination by a national identification card supposed to be required of every job applicant. Because of the perceived "foreign" appearance of national origin minority workers, potential employers and government officials are most likely to ask them to produce the identification card and to blink at the purported requirement in the case of non-minority applicants. Likewise, burdens and errors in the issuance of the card and its administration—for example, in the requirement of proof of birth or legal immigration status—will disproportionately fall upon these minorities. The U.S. worker who is inconvenienced by having to apply for, carry, and produce an identity card is likely to respond with hostility toward the "foreign looking".

Furthermore, we have serious civil liberties objections to a national identity card. Such an identification system is likely to be used for purposes other than work-status identification, rendering it a ready vehicle for the abuse of confidential information. Financial, medical, and a host of other records which might be keyed to a national identification number would be readily available to anyone with access to that number and the appropriate computer technology. Illegal activity of police officers in attempting to enforce the federal immigration laws will be facilitated by the national identity card system; such police officers could then require Hispanic-looking citizens to produce the card to prove the legality of their presence in the United States. Finally, the card system is unenforceable; the methods proposed for making the cards "forge-proof" are easily evaded.[6]

Employer sanctions require the private sector to become the enforcer of federal immigration laws. Private employers will be forced into a law enforcement function that they are unwilling and incapable of carrying out. Even if employers could always make accurate determinations, the burden of doing so would be a crushing addition to their already heavy burden of personnel-related obligations to government. In handling large numbers of employees, apparently innocent mistakes will result in discrimination against potential employees, exposing employers to an additional source of potential liability. Moreover, the delegation to employers of authority to make immigration-status determinations is of highly questionable legality. The federal government has the exclusive responsibility to make and enforce our immigration laws and to regulate the status of aliens within our borders. It cannot abdicate that responsibility, particularly in light of the knowledge that private enforcement would cause discrimination in which the government, by the act of delegation, would have complicity.

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[5] Although Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, prohibits discrimination on the basis of national origin, equal opportunities remain an elusive goal, and discrimination persists.

[5A] A research study entitled "Employer Sanctions", prepared for the Select Commission by the Center for Study of Human Rights at Notre Dame University Law School (fall 1980) points out the many ways in which employer sanctions could increase discrimination.

[6] A "forge-proof" card would be issued on the basis of other documentation—such as social security cards, birth or baptismal certificates, or immigration documents—presented by the card applicant. There is already a large commerce in effectively forged or illegally transferred documents of these types.

Adoption of employer sanctions will require the creation of a new agency or the expansion of an existing agency to ensure their enforcement. This agency is likely to add to the regulatory burdens already borne by the private sector and ultimately contribute to the inflationary spiral by creating a burdensome superstructure which will, inefficiently, try to regulate the supply and demand of labor by law.

Employer sanctions could not be adequately enforced. Such enforcement would require a massive commitment of federal resources, particularly since most undocumented workers are employed by relatively small industrial firms and service companies. The traditional low priority accorded immigration enforcement within the Department of Justice and the more recent emphasis upon frugality which has characterized the federal sector militate against any such commitment. To the contrary, the resources devoted to the enforcement of employer sanctions are likely to be minimal, as are the resources devoted to other federal labor-regulation laws.

Employer sanctions would not effectively curtail illegal immigration. The minimal legal and financial risk to employers who desire to exploit undocumented labor is insufficient to overcome the powerful human and economic forces which underlie the undocumented worker migration. The small fine proposed for an employer who knowingly hires undocumented workers does not seriously undermine the economic advantage of undocumented workers, since a more competitive market wage rate would be necessary to attract domestic workers. Moreover, given the lack of an extensive enforcement effort, an employer runs a negligible risk of being caught. In the eleven states which have enacted employer sanction laws, the GAO found only one judgment against an employer, resulting in a fine of $250.[7] Rather than forego the benefits of hiring undocumented workers, employers who seek this type of work force will in all likelihood successfully evade the law. Employer sanctions legislation would not make undocumented employment less widespread, but would make its conditions more exploitative. The farther a labor market moves away from legal regulation and open public transactions, the greater the degree of job abuses that may be expected, and the less chance that such abuses will be reported.

There is no substantial evidence to support the presumption that undocumented workers take jobs away from citizens and that employer sanctions will significantly open up jobs for unemployed U.S. workers. On the contrary, several studies have demonstrated that most of the jobs held by undocumented immigrants are so undesirable and low-paying that domestic workers will not take them even when they are available. For example, in San Diego in 1977, the California State Human Resources Development Agency tried unsuccessfully to get local citizens to fill jobs left vacant by the apprehension of 2,154 undocumented immigrants. In the absence of proof that "displacement" occurs, it is both presumptuous and economically risky to assume that the need fulfilled by undocumented workers can be equally well met by the domestic workforce.

On the contrary, if employer sanctions could be effectively enforced they might well have a negative effect on our economy and particularly on job creation. Without a supply of cheap labor provided by undocumented workers. Low-wage manufacturing concerns would become more vulnerable to international competition. This would increase the trend for such concerns to relocate aboard in low-wage countries. Such has already been the case in the agricultural, garment, textile, and electronic assembly industries.[7A] Plant relocations would of course take employment away from domestic workers who work in higher-paid jobs in the same industry, as well as displace workers of suppliers and other related businesses.

In sum, while there is no reason to believe that employer sanctions would accomplish any valid policy end, it is clear that they would result in creation of an additional regulatory burden to employers and would result in discrimination against Mexican American citizens and legal residents.

B. "Guest" worker programs.—The concept of "guest" worker programs includes a variety of plans to import foreign workers into the United States on a temporary basis for the purpose of work. Specific proposals range from updated versions of the "bracero" program for contract labor to the issuance of temporary entry and work permits for all who request them. Under all these proposals, the foreign workers receive only minimal legal protections and no right to establish permanent residence in the United States, and are limited in the location, type, or length of employment they may obtain. Most of the proposals also feature some mechanism for determination and control over work opportunities by the federal government. After extensive debate, the Select Commission did not directly address these issues, but suggested minor modifications and a possible "slight" expansion of the existing H-2 program.

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[7] General Accounting Office, Report to Congress by the Comptroller General, "Prospects Dim for Effectively Immigration Laws" (Nov. 5, 1980), p. 8.

[7A] Wayne A. Cornelius, supra, p. 67.

We have fundamental objections to all of the proposed "guest" worker programs. In attempting to provide a temporary workforce whose employment is monitored and adjusted by federal regulation, the proposals take an excessively narrow approach, and one which poorly serves other important policy goals. For the United States to take full advantage of the opportunity to revitalize our workforce, full rights and access to permanent legal residence status should be accorded to immigrant workers. None of the proposals adequately safeguards the right of foreign workers to fair treatment or prevents the erosion of the civil rights of Mexican Americans which a large-scale guest worker program would trigger. All the proposals would require creation of a cumbersome regulatory mechanism. Moreover, guest worker programs simply will not work: they will not stop or diminish the flow of undocumented aliens and will not provide a superior mechanism for meeting our labor needs.

Historical experience with guest worker programs as well as current practice indicates that such programs are designed or used in ways that are inherently unfair to the workers. Before such programs were institutionalized, Mexican workers were imported and summarily expelled as dictated by labor needs, often with attendant hardship to the workers and their families.[8] In the bracero program of the 1940's to early 1960's, Mexican workers were abused by employers who held, by contract, entire control over the workers' ability to remain and work in the United States. Although the Mexican government had negotiated substantial labor rights for the workers, there was virtually no attempt to enforce these assurances; grossly sub-standard pay and work conditions resulted.[9] Growers also manipulated the bracero program to keep unions from organizing agricultural workers.[10] Only a small number of Mexican workers have been involved in the H-2 program of recent years, but the abuses suffered by non-white workers from Carribbean countries provide an ominous preview of employer practices that could accompany any expanded guest worker program.[11] The legal rights of aliens in our country are so narrowly circumscribed that there is no effective quarantee of fair treatment available to the workers.[12] Nor is the European experience with guest worker programs any more reassuring. It appears to be universally true that migrants who are brought to a country on a temporary basis with limited employment rights and legal status are ill treated by the host country and its citizens.

The subjection of foreign guest workers to exploitative working conditions is not merely unfair to them, but will also erode the opportunities and status of Mexican Americans. Attitudes that allow employers and the public at large to view temporary workers from Mexico as expendable commodities to be used and discarded at will inevitably affect Mexican Americans to our detriment. In 1954, when the massive "Operation Wetback" was decreed to remove braceros from an economy that temporarily had no need for them, numerous Mexican American citizens were summarily deported from the United States.[13] Even today it is common for employer attitudes toward and treatment of Mexican American workers to incorporate stereotypes based on derogatory views of temporary Mexican workers whose legal and economic rights are minimal.

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[8] H. Kiser, "Mixican American Labor Force Before World War II," Journal of Mexican American History, vol. 2 (1972).

[9] Julian Zamora, "Los Mojados: The Wetback Story" (Notre Dame University Press, 1971); Ernesto Galarza, "Merchants of Labor," supra.

[10] Wayne A. Cornelius, supra, p. 72; Ernesto Galarza, "Merchants of Labor: An Account of the Managed Migration of Mexican Farmworkers in California, 1942-64" (1964).

[11] H-2 workers have been effectively deported by their employers for protesting harsh work conditions, have been pushed to work very long hours at a debilitating pace, have been denied agree-upon wages through munipulation of workers charges and pay formulas, and have been subjected to squalid living conditions. See, "Analysis of H-2 Program and Request for Rulemaking and Other Relief," filed before Secretary of Labor in re: Temporary Labor Certification Process for Agricultural Workers, by National Association of Farmworker Organizations (1978).

[12] Aliens, even those who are lawful permanent residents, are not adequately protected by federal civil rights statutes. Private citizens' conspiracies against aliens are not covered by federal law (18 U.S.C. §241); organizations like the Ku Klux Klan can terrorize aliens without being subjected to federal criminal prosecution for civil rights violations. Although federal employment discrimination law prohibits national origin discrimination, 42 U.S.C §2000e-2(a), the Supreme Court has ruled that discrimination based on alienage is not covered by this provision, *Espinoza* v. *Farah Mfg. Co.*, 414 U.S. 86 (1973). That reasoning calls into question the protection afforded even lawful resident aliens by federal civil rights legislation in the areas of housing, education, municipal services, and public accommodations.

[13] This procedure was only the most recent and best documented of a series of similar removals, over a period of decades. See, Wayne A. Cornelius, "Mexican Migration to the United States: Causes, Consequences, and U.S. Responses" (Cambridge, 1978), pp. 15-16.

The creation of a temporary worker program to meet the projected labor needs of this country will create a massive federal bureaucracy but will not assure that labor needs are actually satisfied. Any proposed guest worker plan to meet projected labor needs will require the creation of a superagency to coordinate and administer the program. At a minimum, new responsibilities (budget and positions) will be thrust upon the Departments of State, Justice, Labor, Commerce, Agriculture and Treasury. If there is a guest worker program, the National Labor Relations Board, the Equal Employment Opportunity Commission and other federal agencies will have to be authorized, budgeted and staffed at a higher level to carry out their expanded functions of providing protection for temporary workers. It is doubtful, however, that all these agencies could accurately and timely assess the precise needs for wokers in particular jobs and locations, or that these agency functions would receive adequate funds to do that job.

A guest worker program would not stem the flow of undocumented workers into the country. While such a program might temporarily legalize and identify a segment of the immigrant worker population, it would ultimately increase the number of workers who enter or remain in the country illegally. Historically, guest worker programs in both the United States and Europe have had this effect, as guest workers overstay their temporary visas, return illegally to places and jobs with which they became acquainted while temporarily admitted, and opt for the freer albeit riskier status of uncontrolled entry, employment, and residence.[14]

The expedient adoption of a massive temporary worker program would create many problems and would not resolve the "problem" it purports to address—that of eliminating undocumented workers while providing for necessary foreign labor in our work force. A more effective and fairer program would seek to incorporate those persons whose energy and skill we need into our society. Such a program would keep their skills, earnings, and savings here, rather than returning them to foreign countries at regular intervals. Workers who over a period of time staff our industries, pay taxes, and contribute to our economic welfare should receive the social and economic benefits accorded to U.S. residents. They should be given an opportunity to remain here and to become legal permanent residents and, eventually, citizens. What we suggest is simply a permanent upgrading of our workforce, in response to economic needs, instead of resort to ineffectual temporary measures which will undermine the status of Mexican Americans and other minorities.

III. Recommendations for immigration and other related policies

A. The context of immigration policy making.—The formulation of U.S. immigration policy is an intricate task requiring the delicate balancing of a wide range of foreign and domestic policies. U.S. trade policy, our national security and energy policies, our relations with developing countries, the domestic economy, and the civil rights of American citizens are all inextricably linked to U.S. immigration policy. Likewise, the economic and demographic phenomena which must be considered in the formulation of U.S. immigration policy are varied and complex. For example, the significant presence of undocumented workers of Mexican origin is affected by the following factors: on the U.S. side, our need for labor, the insufficient supply of workers to support our "graying" population, stagnant productivity, the causes of persistent unemployment, our need for ample and secure energy resources, and concern for the political stability and orientation of neighboring countries; on the Mexican side, economic underdevelopment and the need for technology and investment capital, the population explosion, and treatment of Mexican nationals within the United States; on a bilateral level, trade restrictions and markets, energy development policy, and response to political instability in the Caribbean basin. We cannot make immigration policy in a vacuum, but must consider its impact on all these other issues. We must also remember that while of course we make U.S. policy based on U.S. interests, our national interest also requires sympathetic attention to the problems of Mexico, which is not only a neighbor of growing influence in the hemisphere and on the international scene, but also holds the key to energy and human resources which may become indispensable to our own national development. U.S. policy toward Mexico is, in the long run, as critical to our national security as is our policy toward the Middle East.

Our recommendations with regard to many matters commonly but imprecisely thought to be questions of immigration policy require that those matters be seen for what they are, not as immigration issues. To the concern for more jobs and reducing

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[14] Miller and Yeres, "A Massive Temporary Worker Program for the United States: Solution or Mirage?" International Labor Organization (Geneva, 1979).

unemployment, we say: the real question is why our economy has failed to produce enough jobs to engage the productive capacity of our people, a failure which is caused by far more basic forces than the recent flow of undocumented workers to jobs shunned by the domestic workforce. To the concern over funding of public services, we say: assure adequate funding by incorporating this dynamic, productive segment of industry and the workforce into our permanent tax base. We invest wisely in our future by providing educational and public health services for all members of our society, and merely defer heavy financial and social liabilities when we deny such opportunities while blaming immigrants for their cost.

B. Specific immigration policy recommendations.—The research and experience necessary to guide the formulation of the immigration component of such important policy packages has not been completed or analyzed. Critical knowledge gaps diminish our ability to legislate or set policy with any clear understanding of either our needs or the consequences of policy alternatives.[15] In this situation, hastily enacted policy decisions would be speculative and potentially counter-productive. The necessary research should be carried out in an objective and comprehensive manner, as expeditiously as possible, to provide a firm foundation for proper action.

Even now, however, the outlines of a fair and effective immigration policy are visible. Immigration policy should provide opportunities for persons who over a period of time work in our industries, pay taxes, and contribute to our economic welfare, or who are immediate relatives of U.S. citizens and permanent residents, to receive the social and economic benefits accorded to U.S. residents. This should be accomplished in four ways:

(1) By recognizing and expanding the traditional family reunification policy which underlies U.S. immigration law.

(2) By eliminating or greatly increasing the per-country limitation of 20,000 visas per year for Mexico.

(3) By adjusting the status of undocumented workers who have equities in our society to permanent resident alien status.

(4) By assuring the fair and nondiscriminatory administration of immigration law by INS, with emphases on service function.

1. FAMILY REUNIFICATION

Family reunification has for several decades been an underlying theme of American immigration policy. Family reunification is favored so that U.S. citizens and permanent residents need not exile themselves in order to be with members of their families. Under this policy, immediate family members are given preference for immigrant visas, by exemption from numerical limitations (in the case of spouses, minor children, and parents of adult citizens) or by reservation of a fixed number of visas for other close family members. While this policy is both humane and prudent in knitting the fabric of a stable, orderly society, the supposed advantage for relatives not exempt from visa allotment limitations is rendered somewhat illusory by those quotas.

The Select Commission endorsed the family reunification policy and recommends that it play "a major and important role in U.S. immigration policy." While we emphatically agree, we must point out that in the case of the country whose nationals need and want to immigrate in greatest number, the policy choice is illusory unless it is implemented by changes in numerical limitations.

2. VISA LIMITATIONS

As recently as 1976, there was no fixed limitation on the number of immigrant visas issued to nationals of Western Hemisphere countries, and Mexican citizens obtained 40,000-50,000 such visas each year. The existing per-country limitation of 20,000 visas creates a hardship on Mexicans attempting to enter the United States legally. There is currently a five year backlog for spouses and children of permanent resident aliens from Mexico, and long waits for siblings and other close relatives. This is unfair since there are many countries, mostly developed countries whose citizens are not desirous of entering the United States, where there is no waiting period for visas. Legal backlogs which are perceived as hopelessly long encourage illegal immigration outside the wait-list visa system. A more equitable approach would be to allocate visas to each country from the total number of visas available in proportion to the number of visas applicants from a particular country in the entire pool of available visas. For example, if there are 100,000 visas available, and 40 percent of all applicants were from Mexico, then Mexico would receive 40,000 visas that year. An alternative approach, which has gained considerable support in recent years, would recognize our special relationship with our neighbors by exempting Mexico and Canada from per-country limitations or granting them a separate, enlarged allotment of visas.

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[15] Robert G. Cox, in his published lecture "Planning for Immigration: A Business Prospective", points out that we have inadequate data on immigration. He also points out that the Select Commission itself characterizes available information as "fragmentary." One example of the type of crucial information which is missing is the extent to which undocumented workers contribute to the national economy, and whether they significantly draw upon public services.

The Select Commission's recommendations would alleviate the unfairness and hardship of the present visa allotment system for Mexican applicants in only minor respects, by slightly expanding the number of family-member entrants whose visas would be exempt from the 20,000 visa limitation. The modest temporary increase in worldwide visa allotments proposed by the Commission will not reduce the Mexican backlog as long as the per-country limitation remains unchanged. We are disappointed that the Select Commission did not recommend an increase in that quota, as is necessary to effectuate its family reunification position.

3. ADJUSTMENT OF STATUS

MALDEF advocates that an opportunity to become legal resident aliens and, eventually, citizens, be given to most persons who have resided and worked in or otherwise established ties with our society. Such opportunity should be extended to all those who entered the United States prior to some fairly recent date—for example, January 1, 1980—and have remained here in a socially or economically productive capacity. All persons who participate successfully in the program should become permanent resident aliens. The opportunity should be well publicized and should truly encourage all eligible undocumented persons to come forward.

The Select Commission recommended adoption of a "legalization" program in the most general terms, without providing detail to make its proposal comprehensible. But from the information provided, it is apparent that the Select Commission approach to "legalization" has two fatal flaws. It does not recommend commencing an amnesty program until all enforcement mechanisms (e.g., employer sanctions, increased police activity by INS) have been instituted; and it offers deportation as the "solution" to those who voluntarily come forward and fail to qualify for the legalization program. The first flaw is obvious; it creates a Catch-22 situation in which there will be a massive crackdown on the undocumented population, with many deportations, followed by a "lenient" legalization program. Then if the undocumented participate in the program, they may still be subject to deportation if they fail to qualify because of the continuous residency requirement. MALDEF recommends that any adjustment of status precede the enforcement crackdown. An effective adjustment program cannot succeed in a period of vigorous interior enforcement. Furthermore, those who fail to qualify for permanent residence should be offered temporary status with the opportunity after one year to qualify for permanent residency based on a good work record and payment of taxes.

This step—adjustment of status of the qualified undocumented population—will not meet all our projected labor needs since the undocumented workers are already present in the U.S. labor market. But it will improve their working conditions, legal status, and eventual political participation. Their equities are great: they have been attracted here by the economic necessities of our country, have contributed their labor, paid their taxes, and have significant community ties. The alternatives—to relegate them to a permanent underclass or to deport them—are unacceptable to MALDEF and the Hispanic community, and would result in our country forfeiting a potentially great human resource.

4. NONDISCRIMINATORY LAW ENFORCEMENT AND SERVICE FUNCTIONS

It is vitally important to the well-being of the country as a whole, as well as to Mexican Americans and other minorities, that we foster respect for the law and non-discriminatory application of the laws. Unfortunately, this country has often broken its promise of equality.[15A] Our federal immigration laws have been sporadically enforced—and when they have, they are enforced in a discriminatory manner. Ninety percent of INS resources are directed at Mexican entrants—who make up less than half of the undocumented population. The Mexican American community

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[15A] Federal civil rights laws have not been enforced vigorously; this has led to cynicism and lack of respect for law in many sectors of the minority community. Federal wage and hour laws, the Federal Fair Labor Standards Act, the Occupational Safety and Health Act—laws that govern working conditions and protect workers who lack personal economic bargaining power—have not been adequately enforced, these violations have bred contempt and disrespect for the law among those who work in the secondary labor market and are subject to such conditions.

perceives that this is because there is little concern about undocumented persons from developed countries who enter illegally or overstay their visas. Racism appears to be a strong factor in this disparity of concerns. INS agents who participate in "area control" operations directed at workplace or residences (not identified idividuals), arbitrarily stop for questioning persons who "look foreign", including many U.S. citizens and legal residents of Mexican, Hispanic, or Asian origin. State and local police officials, who have no legal authority to enforce federal immigration laws, take extraordinary liberties in violating the rights of national origin minorities who "look foreign". Frequently the police attitude that undocumented persons have no rights translates into unnecessarily rough treatment or even physical assault, and citizens and permanent resident aliens have been injured in such incidents. The effect of all these activities on public opinion is to stigmatize undocumented persons, and by association Mexican Americans, as les than fully human and not entitled to equal rights or any rights.

The Select Commission's report is permeated by a belief that draconian police measures can "control" undocumented aliens. It suggests increased interior and border enforcement, and calls for more hardware and personnel for the Border Patrol. Such measures can only make the revolving door of Mexican immigration turn more quickly, but cannot stop a phenomenon which is in response to powerful human, economic, and demographic forces.

We must reverse this orientation and counteract its harmful effects. The commitment to equal justice will more than make up, in benefits for domestic order and civil rights, for the loss of an illusory "efficiency" in apprehensions. Federal, state, and local law enforcement officers should be instructed and required to observe constitutional and legal limitations on their activities. "Law enforcement" also means more than sealing the border or raids on suspected alien centers. It should include more vigorous and effective monitoring and enforcement of labor laws, such as minimum wage, unemployment insurance, and occupational health and safety, that employers often seek to violate by hiring undocumented aliens to work in substandard conditions. Assuring that employers comply with minimum standards legislation will eliminate incentives to hire the undocumented which are illegally inspired.

The "service" function of the Immigration and Naturalization Service is less adequately staffed and funded each year, as the government's emphasis changes from service to discriminatory enforcement. The service aspect of INS should be competently and adequately staffed. The management of INS needs to be brought out of the 19th century and be given automatic data processing capability to permit those nominally in charge to manage the bureaucracy and the work-flow of service cases, applications, and petitions. Huge backlogs and long waits which now confront applicants for entry, certification, adjustment of status, or naturalization, and which may discourage or deter persons from following legal procedures, should be eliminated.

Only when the law is enforced even-handedly, and when INS recognizes its service function as having at least equal importance to its enforcement function, will immigration laws be respected and effective in this country.

C. Other policy recommendations.—Our immigration policy must be coordinated with all other related policies—trade, energy, foreign, and domestic. The goals of all those policies should be to enhance American economic development, social welfare and civil rights, and national security, and to ensure a stable, developed, democratic and non-totalitarian nation on our southern as well as northern border. We must realistically address such difficult issues as improving opportunities for American minorities with the realization that immigration policy will not provide a "quick fix" for any of these intractable problems. Indeed, sound and successful policies that resolve our real economic problems will alleviate much of the perceived "problem" of undocumented workers which fuels the current immigration debate. Likewise, immigration policy cannot bring about necessary development of labor-intensive industries in those parts of Mexico which have the most severe job shortages and now export their excess workers. A combination of trade, investment, and technical assistance must complement immigration policies to accomplish this long-term development, which would deal with the underlying sources of the Mexican migrant flow.

It would be beyond the scope of this testimony to suggest in any detail what other policies, outside the immigration area, should be followed in lieu of the ill-advised employer sanctions and guest worker programs and in addition to the positive immigration proposals set out above. But these other policy goals may be briefly indicated. They are not new, but they are hard and they are important. They include provision of equal educational opportunities, growth in jobs and productivity, effective prohibition of employment discrimination, equal treatment of all persons by government. They are the basic problems and the basic goals that have existed since before we became concerned about immigration "problems" and immigration policy goals, and they will remain with us no matter how we shape our immigration policy. By effectively addressing these issues, our country can maintain a sound economic and social condition. Without meeting our most basic national challenges head-on, we can accomplish little by a narrow focus on immigration policy.

Mr. MAZZOLI. Thank you, Ms. Martinez.

By the agreement, the Senator from Massachusetts is recognized for 5 minutes.

Senator KENNEDY. Thank you very much.

I want to welcome all of the panel here and indicate that I will look forward to reading their testimony in its entirety.

The Select Commission itself recommended, as I understand it, at least three of your four observations and recommendations. I am basically in support of all four of them. I have introduced legislation to increase the numbers for Mexico, and we passed it out of the Judiciary Committee last year—to facilitate the reunification of families from Mexico. I think the waiting time now is probably 7 to 9 years with respect to some children and wives of permanent resident aliens, is that right?

Ms. MARTINEZ. That is right.

Senator KENNEDY. And that is something that certainly should be addressed. And the adjustment of status of undocumented aliens is something that we have done for other nationalities at other times, and certainly I think that it is something that hopefully we will do in the fair administration of any new law.

But if we could just address the issue that has been the most difficult for you and me, and that is the issue of employer sanctions. I do not think there is any question that discrimination on the basis of race continues to exist in our society among some employers. I suppose the real question is, if there is some kind of readily identifiable system such as a social security card, whether you cannot make further progress toward eliminating discrimination.

I am just interested in hearing you out on this. This is obviously a matter on which the Select Commission spent a great deal of time. And I think that many of us have seen, as I am sure you have, the extraordinary exploitation of undocumented workers in the past. It is continuing today. The real question is, as you know, whether there is a greater chance of discrimination by just continuing a nonsystem now, where there is exploitation of undocumented aliens or whether with sanctions and use of a social security card and the opportunity to enforce antidiscriminatory laws that exist on the books it might be helpful. Granted, in many instances these laws are not being enforced at the present time, but if you could just comment on this.

Ms. MARTINEZ. I want to state for the record, I know that you know this. We have thought long and hard about these issues. We would like to help you help us find solutions to them. But very frankly, we have not found them. We have not yet seen a scheme of employer sanctions with any kind of ID card which we feel would not result in additional discrimination.

I was here yesterday, and I have for a long time been led by Father Ted Hesburgh. But I disagree with him on this issue. And I heard him tell the panel yesterday that he proudly carries three pieces of identification that had his picture on it. One of them is to go into the Chase Manhattan Bank, because he is on the board.

And I thought about that and reflected some, and I said to myself: Well, I carry some attractive identification too, but the real problem comes into the situation where the government forces an additional badge not of achievement on you, but a badge of inferiority. And my fear is that employer sanctions with those cards will become a badge of inferiority for Mexican Americans and other "foreign looking Americans." And my fear is based on my experience.

As a lawyer, I have tremendous respect for the law. I know that lawfully local police officers are not supposed to enforce the immigration law. I know as a practical matter they violate that all the time and I am forced to show them my identification. I think this card will only add to that, even if you were to write some safeguards into the law.

Those are my concerns.

Senator KENNEDY. The Select Commission discussed at some length the question of requiring of a special new employee identification card. That was one of the issues that came up, and the panel was divided on it. I voted in opposition to it.

The real question is whether you could use existing identification procedures, such as the social security card, for example, and not establishing a whole new system. Would you draw any distinction between that and the other?

Ms. MARTINEZ. No. My fear is that it would have the same end result. The end result is that there would be some way that it would be utilized as a badge of inferiority against Mexican Americans and other foreign-looking Americans.

To the extent that people such as yourselves worry about exploitation of the undocumented or discrimination against Mexican Americans, I say to you we have laws on the books prohibiting discrimination, prohibiting exploitation, through OSHA, through the Fair Labor Standards Act. And I think that is where those rehabilitative efforts ought to be placed.

Mr. MAZZOLI. The gentleman's time has expired.

We will proceed with the remainder of the panel: Ms. Simmons and then Mr. Kee, and then we will have questions.

STATEMENT OF ALTHEA T. L. SIMMONS, DIRECTOR OF THE WASHINGTON BUREAU OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Ms. SIMMONS. Mr. Chairman and members of the subcommittees: I am Althea T. L. Simmons, director of the Washington bureau of the NAACP. Thank you so much for allowing us to come and testify.

The NAACP has been a leading opponent of racial discrimination since its founding 72 years ago, and we testify here today on the question of immigration policy, a matter which I am sorry to say, relates at least in part to the question of racial discrimination.

Before further elaborating on that point, I will outline our general position on immigration. We are committed, as an organization, to working for the removal of all barriers of racial discrimination through democratic processes. We also identify with disadvantaged persons of all races, colors, and creeds. We believe that there is a need for a pluralistic society, and for those reasons we believe that immigration is now and has been good for America and that immigration should continue.

In addition to the legal immigrants in this Nation, there are three other groups of aliens in the country I want to talk about. There are the political refugees, the people fleeing oppression. There are the nonimmigrants, those who have been admitted legally on a temporary basis to perform a particular role in our society. Then there are the undocumented workers who are here in violation of our immigration laws.

Refugees have generally been welcome to enter our shores, as we attest to on the Statue of Liberty, calling for welcome to the tired and the poor. But the NAACP has found out over the years that there is discrimination in the way we let people come into this country.

In researching our policy positions, I looked back as early as 1953 and saw policy positions calling for revision of the McCarran-Walter Act because that act discriminated against people of color by virtually eliminating immigration from the Caribbean countries. It also discriminated against persons of Oriental origin.

The NAACP is concerned that a distinction is made regarding one group of political refugees, those from Haiti, who are fleeing from conditions as harsh as those in Vietnam, and yet they have not been defined as political refugees by the Immigration and Naturalization Service. I recall last year talking to someone from the State Department and I was told that it is done on a case-by-case basis. We do know that our country accepts refugees from Indochina, from Cuba, Afghanistan, and regard them as political refugees, and yet Haitian refugees are subjected to a double standard and are not accorded refugee status because they have been termed economic refugees.

The NAACP last year went on record with a resolution calling on the Congress to enact permanent legislation to designate Haitians as political refugees.

Another segment of immigration policy in which we have a concern relates to the admission of temporary alien workers to the U.S. labor market. Years ago we opposed, for example, the notorious bracero program, and we were quite disturbed to hear the President say recently that he was "intrigued" by the prospect.

We believe, Mr. Chairman and members of the subcommittee, that there is an ample supply of workers in this country right now. About 8 million of them are unemployed. Black unemployment is twice that of white unemployment, and black youth unemployment runs about 40 to 50 percent. We believe that too many workers create unemployment for the workers and unemployment compensation costs for the Government.

We also believe that the addition of temporary alien workers generally means the addition of workers with limited rights, and we know that was the case in the bracero program. Many employers exploit such workers, and we think that exploitation is wrong.

The NAACP is part of the Task Force on Immigration Policy of the National Committee for Full Employment. That is a coalition of organized labor, black and Hispanic groups and representatives of organized religion. The task force urged the President and the Congress not to introduce any program that would work to the disadvantage of the workers here in America.

We are concerned about the impact of undocumented workers on other disadvantaged U.S. workers. It is the NAACP's position that it should be against the law for employers to hire undocumented workers. And I say now, we have no magic formula as to how such a law would be enforced, and we did not attempt to address that issue last year when we passed the policy statement calling, for example, on the President and the Congress to approve of the levying of stiff monetary and/or imprisonment penalties on persons, businesses and/or groups found to be guilty of violating the employment and use of undocumented workers.

These are some of our concerns, concerns based on our deep feelings of identification with disadvantaged workers and in line with the objectives for which my organization was founded. We do not believe that black political refugees should be accorded unequal status. We worry about the large numbers and adverse impacts of undocumented workers on our society, but we lack the expertise to tell you how to approach the problem.

There is one thing we are certain of, and that is that the answer to the illegal alien problem, as the Select Commission has realized as well, is not to create a massive foreign worker program.

Thank you so much.

[The prepared statement of Althea T. L. Simmons follows:]

Prepared Statement of Althea T. L. Simmons

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEES, I AM ALTHEA T. L. SIMMONS, DIRECTOR OF THE WASHINGTON BUREAU OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE. WE APPRECIATE THE OPPORTUNITY TO MAKE THIS STATEMENT ON BEHALF OF THE MORE THAN 1800 BRANCHES AND YOUTH UNITS OF THE NAACP WHICH ARE LOCATED IN EVERY STATE OF THE UNION AND THE DISTRICT OF COLUMBIA.

THE NAACP HAS BEEN THE LEADING OPPONENT OF RACIAL DISCRIMINATION SINCE ITS FOUNDING 72 YEARS AGO IN THE AFTERMATH OF A BLOODY RACE RIOT IN SPRINGFIELD, ILLINOIS. WE TESTIFY HERE TODAY ON THE QUESTION OF IMMIGRATION POLICY, A MATTER WHICH, I AM SORRY TO SAY, RELATES AT LEAST IN PART TO THE QUESTION OF RACIAL DISCRIMINATION.

BEFORE FURTHER ELABORATING ON THAT LAST POINT, I WILL OUTLINE OUR GENERAL POSITION ON IMMIGRATION. THE NAACP IS AN ORGANIZATION COMMITTED TO WORKING FOR THE REMOVAL OF ALL BARRIERS OF RACIAL DISCRIMINATION THROUGH DEMOCRATIC PROCESSES. WE ALSO IDENTIFY WITH DISADVANTAGED PEOPLE OF ALL RACES, COLORS AND CREEDS. WE BELIEVE IN THE USEFULNESS OF A COSMOPOLITAN SOCIETY OR AS IT IS CALLED IN SOME QUARTERS, A PLURALISTIC SOCIETY. FOR THOSE AND OTHER REASONS, WE BELIEVE THAT IMMIGRATION IS NOW, AND HAS BEEN, GOOD FOR AMERICA, AND THAT IMMIGRATION SHOULD CONTINUE.

IN ADDITION TO THE LEGAL IMMIGRANTS IN THE NATION, THE SUBJECT OF MUCH OF THE OTHER TESTIMONY BEFORE THESE COMMITTEES, THERE ARE THREE OTHER GROUPS OF ALIENS IN THE COUNTRY, AND I WANT TO SAY SOMETHING ABOUT EACH OF THOSE GROUPS. THERE ARE THE POLITICAL REFUGEES--PEOPLE FLEEING OPPRESSION. THEN THERE ARE THE NONIMMIGRANTS--PEOPLE WHO HAVE BEEN ADMITTED LEGALLY ON A TEMPORARY BASIS TO PERFORM A PARTICULAR ROLE IN OUR SOCIETY (DIPLOMATS ARE NONIMMIGRANTS, AS ARE FOREIGN STUDENTS, AMONG OTHERS). FINALLY, THERE ARE THE UNDOCUMENTED ALIENS, WHO ARE HERE IN VIOLATION OF OUR IMMIGRATION LAWS.

REFUGEES HAVE GENERALLY BEEN WELCOME TO ENTER OUR SHORES AS ATTESTED BY THE INSCRIPTION ON THE STATUTE OF LIBERTY: HOWEVER, IN EXTENDING A WELCOME TO THE "TIRED, THE POOR" OUR COUNTRY, IN PRACTICE, HAS DISCRIMINATED AGAINST COLORED PEOPLE. THE NAACP IS ON RECORD, AS EARLY AS 1953 CALLING FOR A REVISION OF THE MCCARRAN-WALTER ACT BECAUSE IT DISCRIMINATED AGAINST PEOPLE OF COLOR BY VIRTUALLY ELIMINATING IMMIGRATION FROM THE CARIBBEAN COUNTRIES. IT DISCRIMINATED AGAINST DESCENDANTS OF ASIATICS BY CHARGING THOSE OF HALF ORIENTAL PARENTAGE TO ORIENTAL QUOTAS REGARDLESS OF THE COUNTRY OF THEIR BIRTH. WE URGED THE ELIMINATION OF THE NATIONAL ORIGIN QUOTA SYSTEM AND OTHER RACIST-

BASED PROVISIONS AND CALLED FOR LIBERALIZATION OF PROCEDURES IN ACCORDANCE WITH FAIR AND EQUAL TREATMENT FOR ALL IMMIGRANTS AND PROSPECTIVE IMMIGRANTS. I CITE THIS TO SHOW THAT THE NAACP HAS A LONG_STANDING INTEREST IN THE AREA BEING CONSIDERED BY THIS HEARING.

THE NAACP IS CONCERNED THAT A DISTINCTION IS MADE REGARDING ONE GROUP OF POLITICAL REFUGEES--THOSE FROM HAITI--WHO ARE FLEEING A DESPOTISM AS HARSH AS THAT OF VIETNAM AND YET THEY HAVE NOT BEEN DEFINED AS POLITICAL REFUGEES BY THE IMMIGRATION AND NATURALIZATION SERVICE. LAST YEAR A STATE DEPARTMENT OFFICIAL SAID THAT THE DETERMINATION OF "POLITICAL" REFUGEES IS DONE ON A CASE-BY-CASE BASIS. WE DO KNOW THAT OUR COUNTRY ACCEPTS REFUGEES FROM INDOCHINA, CUBA, EVEN FROM AFGHANISTAN, AND REGARD THEM AS POLITICAL REFUGEES, AND YET HAITIAN REFUGEES ARE SUBJECTED TO A DOUBLE STANDARD AND ARE NOT ACCORDED REFUGEE STATUS USING THE RUBRIC THAT THEY ARE ECONOMIC REFUGEES RATHER THAN POLITICAL REFUGEES.

AT THE 71ST ANNUAL NATIONAL CONVENTION OF THE NAACP LAST YEAR IN MIAMI, MY ORGANIZATION WENT ON RECORD WITH A POLICY STATEMENT REGARDING THEIR PLIGHT. THE RESOLUTION SAID, IN PART:

> "WHEREAS, the granting of refugee status to the Haitian 'boat people' is moral, humane and refutation of the perception that our refugee policy is tainted by racial, ideological or class discrimination;
>
> "WHEREAS, discrimination against Haitians turns on whether Haitians are fleeing political persecution or economic conditions;
>
> "THEREFORE BE IT RESOLVED, that the NAACP call upon the President to issue an appropriate Executive Order to declare them political refugees;
>
> "BE IT FURTHER RESOLVED, that the NAACP call upon the Congress to enact permanent legislation to designate Haitians as political refugees..."

THE SECOND SEGMENT OF IMMIGRATION POLICY IN WHICH WE HAVE A SPECIAL AND LONG-TIME CONCERN, RELATES TO THE ADMISSION OF TEMPORARY ALIEN WORKERS TO THE U. S. LABOR MARKET. WE THOUGHT THAT QUESTION HAD BEEN SETTLED BACK IN THE EARLY 1960's, WHEN THE CONGRESS DECIDED NOT TO EXTEND THE NOTORIOUS BRACERO PROGRAM. THE NAACP OPPOSES THE REINSTITUTION OF SUCH PROGRAM, ALTHOUGH PRESIDENT REAGAN HAS STATED HE IS "INTRIGUED" BY THAT PROSPECT.

MR. CHAIRMAN, AND MEMBERS OF THE SUBCOMMITTEES, WE BELIEVE THAT WE HAVE AN AMPLE SUPPLY OF WORKERS IN THIS COUNTRY RIGHT NOW. ABOUT EIGHT MILLION OF THEM ARE UNEMPLOYED. BLACK UNEMPLOYMENT IS TWICE THAT OF WHITE AND BLACK YOUTH ARE UNEMPLOYED AT A RATE OF APPROXIMATELY 40%. TOO MANY WORKERS CREATE UNEMPLOYMENT FOR THE WORKERS AND UNEMPLOYMENT COMPENSATION COSTS FOR THE GOVERN-

MENT. FURTHER, THE ADDITION OF TEMPORARY ALIEN WORKERS GENERALLY MEANS THE ADDITION OF WORKERS WITH LIMITED RIGHTS. THIS CERTAINLY WAS THE CASE IN THE BRACERO PROGRAM.

MANY EMPLOYERS ACTIVELY PREFER SUCH WORKERS, ON THE GROUND THAT THEY ARE DOCILE AND WILL NOT DEMAND THEIR RIGHTS. THE PRESENCE OF EXTRA WORKERS WITH LIMITED RIGHTS TEENDS TO LOOSEN U. S. LABOR MARKETS, DEPRESSING WAGES AND WORKING CONDITIONS FOR RESIDENT WORKERS.

THE NAACP IS A PART OF THE TASK FORCE ON IMMIGRATION POLICY OF THE NATIONAL COMMITTEE FOR FULL EMPLOYMENT, A COALITION OF ORGAMIZED LABOR, BLACK AND HISPANIC GROUPS AND REPRESENTATIVE OF ORGANIZED RELIGION. THE TASK FORCE HAS UNANIMOUSLY URGED THE PRESIDENT AND THE CONGRESS NOT TO INTRO-

> "The United States and Mexico experimented with several variations of temporary foreign worker programs for a generation, and they were disasters. The bracero program, which operated from 1942 through 1964, brought ill-paid Mexican campesinos to work for U.S. agribusiness by the hundreds of thousands. While it provided a windfall (in the form of cheap, docile labor) to a tiny minority of the nation's farmers, it depressed wages and working conditions for competing U.S. workers, postponed the rationalization of the agricultural labor market, exploited the Mexican farmworkers, and caused endless, needless grief in U.S.-Mexico relations.
>
> "Even if the Administration devises a somewhat less exploitive program than the old bracero operation, temporary foreign worker programs worldwide tend to provide less than equal rights for workers..."

FINALLY, WE ARE CONCERNED ABOUT THE IMPACT OF UNDOCUMENTED WORKERS ON OTHER DISADVANTAGED UNITED STATES WORKERS. IT IS THE NAACP'S POSITION THAT IT SHOULD BE AGAINST THE LAW FOR EMPLOYERS TO HIRE UNDOCUMENTED WORKERS. WE HAVE NO MAGIC FORMULA AS TO HOW TO ENFORCE SUCH A LAW AND WE DID NOT ATTEMPT TO ADDRESS THAT ISSUE WHEN WE LAST SPOKE ON THE ISSUE OF UNDOCUMENTED WORKERS AT OUR 68TH ANNUAL NATIONAL CONVENTION IN ST. LOUIS IN 1977. THE FOLLOWING STATEMENT OF POLICY WAS ADOPTED AT THAT TIME:

> "WHEREAS, the NAACP is concerned about the effect of employment of illegal aliens on employment opportunities of black citizens in these United States; and
>
> "WHEREAS, legislation has been introduced in the Congress to curb the employment of such aliens; and
>
> "WHEREAS, the proposed legislation raised serious problems of civil rights as well as civil liberties, including the use of identity cards for all citizens; and
>
> "WHEREAS, the proposed use of such identity cards is fraught with dangers of abuse of official powers,

"THEREFORE BE IT RESOLVED, that the NAACP in Convention assembled, direct the chairperson, Executive Director, and its National Board of Directors to advise the President of the United States, the Congress, and through them all appropriate departments, agencies, corporations, businesses and individuals, of its grave concerns relating to illegal aliens, their unlawful employment and the need for assurance of full observation of the civil rights of all U.S. citizens when legislation is drafted to deal with this problem.

"BE IT FURTHER RESOLVED, that the President and the Congress, through the passage and enactment of proper legislation call for the immediate cessation of the employment and use of all illegal aliens.

"AND BE IT FINALLY RESOLVED, that the President and the Congress approve of the levying of stiff monetary and/or imprisonment penalties to be imposed on all persons, businesses and/or groups and organizations found to be guilty of violations of the employment and use of illegal aliens.

THE NAACP HAD DISCUSSIONS ON THE SUBJECT MATTER OF THE ABOVE RESOLUTION WITH THEN PRESIDENT CARTER AND ATTORNEY GENERAL GRIFFIN BELL AND URGED THAT APPROPRIATE SANCTIONS BE IMPOSED ON EMPLOYERS FOUND GUILTY OF HIRING UNDOCUMENTED WORKERS. OUR POSITION HAS NOT CHANGED AND WE AGAIN URGED THE CONGRESS TO CONSIDER AND ENACT PROPER LEGISLATION IN THIS AREA.

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEES, THESE ARE SOME OF OUR CONCERNS. CONCERNS BASED ON OUR DEEP FEELINGS OF IDENTIFICATION WITH DISADVANTAGED WORKERS AND IN LINE WITH THE OBJECTIVES FOR WHICH MY ORGANIZATION WAS FOUNDED. THE NAACP DOES NOT BELIEVE THAT BLACK POLITICAL REFUGEES SHOULD BE ACCORDED DIFFERENT TREATMENT THAN THAT AFFORDED OTHER POLITICAL REFUGEES. WE WORRY ABOUT THE LARGE NUMBERS AND ADVERSE IMPACTS OF UNDOCUMENTED WORKERS ON OUR SOCIETY, BUT WE LACK THE EXPERTISE TO TELL YOU HOW TO APPROACH THE PROBLEM. THERE IS ONE THING WE ARE CERTAIN OF AND THAT IS --THE ANSWER TO THE ILLEGAL ALIEN PROBLEM, AS THE SELECT COMMISSION REALIZED AS WELL--IS NOT TO CREATE A MASSIVE FOREIGN WORKER PROGRAM.

THANK YOU MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEES FOR ALLOWING US THIS OPPORTUNITY TO BE HEARD ON THIS VITAL MATTER.

Mr. MAZZOLI. Thank you very much, Ms. Simmons.

Mr. Kee is recognized for 5 minutes.

STATEMENT OF NORMAN LAU KEE, CHAIRMAN, IMMIGRATION AND REFUGEE POLICY TASK FORCE OF THE UNITED STATES-ASIA INSTITUTE

Mr. KEE. Mr. Chairman, honorable members of the subcommittees, I want to express my appreciation for this opportunity to testify before you.

Until the recent past, Asians have been the target of discriminatory and racist provisions in our immigration laws. For many years, the immigration laws of this great nation proclaimed that Asians were less desirable and less able than others to become immigrants and future citizens of the United States. This perception of Asians and Asian Americans was one of the contributing factors which led to many instances of civil rights violations and ultimately to that shameful episode in U.S. history in which Americans of Japanese ancestry were placed in internment camps.

In fact, immigrants from Asia have become exemplary American citizens. We can count among us Nobel laureates, leaders in science and technology, in trade and commerce, and in all walks of American life. We have fought with distinction and bravery along with other Americans. Although our forefathers came as immigrants, we do not want to be perceived as foreigners because of our appearance or because of our desire to retain some aspects of our cultural heritage.

Therefore, Asian Americans are vitally concerned and interested in present and future immigration and refugee policy. In late 1979, the United States-Asia Institute assembled a task force of immigration experts to explore and assess all aspects of immigration laws and their impact on Asian Americans.

After months of dedicated work, this task force published a paper entitled "An Asian/Pacific American Perspective: Future Directions of U.S. Immigration and Refugee Policy," a copy of which has been presented to you as well as to all Members of Congress and the Select Commission. We sincerely hope it will serve as a resource to your committee in understanding the Asian American perspective, and I would like to submit it for the record.

Mr. MAZZOLI. It will be received as part of the record.

Mr. KEE. A review of our position paper indicates that there is no great difference in our overall objectives of having a fair and effective immigration law to serve the U.S. national interest. In our study, we had identified areas of inequities in the present immigration law in which the hardship falls essentially on Asian Americans.

One of these concerns elderly permanent residents who have resided in the United States for many years and have been receiving SSI to supplement their inadequate income. Under the present statute, which provides that each entry is treated as a new entry, they may be excluded upon returning to the United States after a trip abroad on the grounds that they are likely to become public charges. We concur with the Select Commission's recommendation that the present law be changed to take care of this situation.

Another area of inequity is the requirement for all applicants for permanent residence as a medical doctor to take the parts 1 and 2 of the national boards. This was a special hardship on the many doctors of Asian ancestry who had waited many years for a quota number and found themselves required to take an examination on basic sciences usually required in the second year of medical school. The Select Commission has recommended that part 1, or the basic science portion of the exam, be eliminated and we concur in this recommendation.

Perhaps the most important issue for Asian Americans is the retention of the fifth preference category, for siblings. Asians consider brothers and sisters to be part of a nuclear family and feel very strongly that family reunification includes siblings and their families. It has been traditional that brothers are responsible for the livelihood and well-being of brothers and sisters and that they have always been ready and willing to be financial guarantors for them.

Inasmuch as the sibling relationship would be subject to quota limitation, we feel it would be in the national interest to continue the preference rather than allocate these numbers for the independent category, for which the criteria for entry are somewhat uncertain and unpredictable.

We differ with the Select Commission's recommendation to maintain the present system of reviewing consular denials of visa applications. Presently a denial is informally reviewed by another consular officer at the same post. The visa applicant has the right to ask for an advisory opinion from the State Department.

However, we believe that there should be a more structured, more objective and impartial system of review, particularly in cases of petition submitted by relatives who are citizens or permanent residents of the United States. We propose the establishment of a board of visa appeals in the State Department similar to the Board of Immigration Appeal.

We have also subscribed to the recommendation of the Select Commission for the strengthening of the Immigration Service to make it a more effective and professional organization. We also support the legalization of undocumented aliens on a broad basis, as recommended by the Select Commission.

In closing, I would like to quote a few remarks from the Chairman of the United States-Asia Institute, Kay Sugahara:

> The United States has a secret weapon, something more than military might. The United States has an advantage over all nations in this world because we are a free nation guaranteeing certain rights to all citizens. The United States has an advantage because our immigration policy, no matter how imperfect, has enabled us to accumulate a wide mixture of people, enabling us to have access to every nation in the world.

Thank you very much.

[The prepared statement of Mr. Kee and material submitted for the record follow:]

PREPARED STATEMENT OF NORMAN LAU KEE

(Mr. Kee is the senior partner of the law firm of KEE and LAU-KEE of New York City. He is also a member of the Federal Advisory Committee to the Immigration and Naturalization Service, having been its chairman for 1979 and 1980; a former New York City Commissioner of Human Rights from 1975-1978; and a board member of many civic and community organizations.)

Ladies and gentlemen, honorable members of the Judiciary Committee, I want to express my appreciation for this opportunity to testify before you.

Until the recent past, Asians have been the target of discriminatory and racist provisions in our immigration laws. For many years, the immigration laws of this great nation proclaimed that Asians were less desirable, and less able than others, to become immigrants and future citizens of the United States. This perception of Asians and Asian Americans was one of the contributing factors which led to many instances of civil rights violations, and ultimately, to that shameful episode in United States history in which Americans of Japanese ancestry were placed in internment camps.

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A review of our position paper indicates that there is no difference in our overall objectives of having a fair and effective immigration law to serve the United States national interest. In our study, we had identified areas of inequities in the present immigration law in which the hardship falls essentially on Asian Americans. One of these concerns elderly permanent residents who have resided in the United States for many years and have received SSI to supplement their inadequate income. Under the present statute which provides that each entry is treated as a new entry, they may be excluded upon returning to the United States after a trip abroad on the grounds that they are likely to become public charges. We concur with the Select Commission recommendation that the present law be changed to take care of this situation. Another area of inequity is the requirement for all application for permanent residence as a medical doctor to take Part I and II of the National Board. This was a special hardship on the many doctors of Asian ancestry who had waited many years for a quota number and found themselves required to take an exam on basic sciences usually required in the second year of medical school. The Select Commission has recommended that Part I or the basic science portion of the exam be eliminated for those doctors who have been already in practice and we concur in this recommendation.

Perhaps the most important issue for Asian Americans is the retention of the 5th preference category for siblings. Asians consider brothers and sisters to be part of the nucleus family and feel strongly that family reunification include siblings. It has been traditional that brothers are responsible for the livelihood and well-being of their brothers and sisters and they are always ready and willing to be financial guarantors for them. Inasmuch as the brother-sister relationship would be subject to quota limitation, we feel it would be in the national interest to continue the preference for brothers and sisters rather than allocate these numbers for the independent category for which the criteria for entry are somewhat uncertain and unpredictable.

We differ with the Select Commission's recommendation to maintain the present system of reviewing Consular denials of visa applications. Presently, a denial is informally reviewed by another Consular Officer at the same post. The visa applicant has the right to ask for advisory opinion from the Visa Officer of the State Department in Washington, D.C. We believe that there should be a more structured, objective and impartial system of review, particularly in cases of petition submitted by relatives who are citizens or permanent residents of the United States. We propose the establishment of a Board of Visa Appeals in the State Department which would have functions similiar to those of the Board of Immigration Appeal, as an additional avenue of appeal in those cases.

We have also subscribed to the recommendation of the Select Commission for the strengthening of the Immigration Service to make it a more effective and professional organization. We also support the legalization of undocumented aliens on a broad basis as recommended by the Select Commission.

In closing, I would like to quote a few remarks from the chairman of the U.S.-Asia Institute, Kay Sugahara: "The United States has a secret weapon . . . something more than military might. . . . The United States has an advantage over all nations in this world, because we are a free nation guaranteeing certain rights to all our citizens. . . . The United States has an advantage because our immigration policy, no matter how imperfect, enabled us to accumulate a wide mixture of people enabling us to have access to every nation in the world.

We may as well frankly admit that our natural prejudices prevented our country from using its full resources for which we were minor league. To cite a parallel, professional baseball for generations was inhibited from using Blacks. Will you not agree that in world athletic competition in baseball, football, basketball and track that the United States would be weaker if we exluded Blacks and Hispanics from our teams?

There are today 3.5 million American citizens of Asian origin. The U.S.-Asia Institute was formed to fill a great need. We will focus on how the U.S.-Asia Institute can help our nation meet the problems of our generation. Our contributions should make the earlier waves of immigrants very happy that immigrants did not stop with Ellis Island.

Our Institute must have the courage to face tough issues of today. While our 3.5 million constituents form a small fration of the national population, acting in concert they become a national asset.

On the immigration issue we can contribute much by stimulating thought instead of heightening emotional reaction.

With your guidance and cooperation, we will tackle the issue of national concern where the unique skills and contacts of U.S.-Asians can be useful for our nation.

How can we contribute more to America?

Thank you, ladies and gentlemen!

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The US-ASIA INSTITUTE, a national nonprofit organization, was founded in 1979 by a group of Asian/Pacific Americans concerned about the future of United States relations with East Asian and Pacific countries. Recognizing the strategic importance of the East Asian and Pacific region, and feeling Asian/Pacific Americans as a group had a unique contribution to make, the US-Asia Institute was established as a vehicle for studying the issues, presenting viable alternatives, and offering opportunities for interaction and discussion.

The Institute focuses its efforts in four areas:

(1) Communication. The US-Asia Institute has direct lines of communication with East Asian and Pacific political and business leaders. These lines, combined with the unique bicultural/bilingual skills of Asian/Pacific Americans, allow the Institute to facilitate communication between interested parties and contacts in the East Asian and Pacific world.

Likewise, with a constituency of over four million Asian/Pacific Americans, the Institute has the ability to focus on problems facing the United States, offering particularly accurate observations in areas involving Pacific Basin nations.

(2) International & Domestic Discussions. Conferences, workshops, seminars, and face-to-face discussions are sponsored by the US-Asia Institute on a regular basis to address key issues of the day, specifically in the areas of foreign policy, international trade, and small business. Forums vary from State Department briefings to international problem seminars in East Asian and Pacific countries to national leadership conferences to domestic/international dinner discussions to private meetings with political and business leaders. Through these discussions, the Institute seeks to bring to the forefront problems of international and domestic concern, and to present practical solutions to the concerns.

(3) Research/Publishing. Research is conducted for the US-Asia Institute by its Advisory Committees, professors on sabbatical leave at the Institute, its seminar participants, its Board and staff members. This research focuses on topics of international and domestic importance, offering an Asian/Pacific American perspective on key issues.

The Institute publishes research -- both in-house and from the outside -- providing the work meets the guidelines of the US-Asia Institute's editorial policy and is deemed within the realm of Institute focus.

(4) Technical Assistance. The US-Asia Institute offers expert technical assistance in the areas of small business, international trade, and foreign policy, concentrating on the East Asian and Pacific region. Services range from coordinating trade missions to conference strategy planning to providing statistical abstracts on specific trade areas to mediating trade discussions to consulting with key contacts on particular issues.

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The Board of Directors of the U.S.-Asia Institute consists of 14 Asian/Pacific American leaders from across the United States. Prominent in their own fields, they came together with the common goal of creating a national Asian/Pacific American "think tank" to set forth the contributions and perspective of Asian/Pacific Americans.

KAY SUGAHARA serves as Chairman of the Board of the US-Asia Institute. Possibly the foremost Asian/Pacific American in the U.S., Sugahara is Chairman of the Fairfield Group, a diversified investment corporation dealing in oil tankers, refrigerated ships, and oil and gas exploration. Sugahara assumed the chairmanship of the Institute in April 1981.

ESTHER G. KEE serves as Executive Director of the US-Asia Institute. One of the Co-Founders of the Institute, Mrs. Kee has a myriad of interests and accomplishments. She has successfully managed her own business, coordinated political functions and fundraisers, and served on various boards including the Citizens Advisory Board for WNET-TV in New York. She has a leading role in the direction of the U.S. State Department through her service on the President's Advisory Board on Ambassadorial Appointments and the State Department's Selection Board Advisory Committee.

JOJI KONOSHIMA serves as Associate Executive Director of the US-Asia Institute, charged with Government and International Relations. The other Co-Founder of the Institute, Konoshima has long been active in governmental and international affairs starting with a long, active history in New York labor politics, and over the years developing contacts with virtually every East Asian and Pacific political and business leader as well as contacts throughout the U.S.

GEORGE ARATANI is a Los Angeles businessman active in international trade and Japanese American community affairs. He has presided over the successful growth of two corporations which he serves as Chairman--American Commercial, Inc. and Kenwood Electronics, Inc.

KENNETH CHAR has been a key figure in the development of Hawaii's travel and tourism industry as Vice Chair of Aloha Airlines and Vice President of Air Micronesia, Inc. Char has a broad range of activities and public service in many state and national organizations.

GEORGE DOIZAKI serves as President of the American Fish Company in Los Angeles and has interest in numerous investment corporations. Doizaki organized various community and religious entities, including the San Fernando Buddhist Sunday School, the Valley Japanese Community Center, the San Fernando Credit Union, the Valley Judo School, the Southern California Fisheries association, to name a few. Further, he serves as President of the Japanese American Community Planning and Development Corporation which is coordinating the Little Tokyo project in downtown Los Angeles.

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MANUEL JOSE is President of Ed & Joe's, Inc., a trading firm based in Agana, Guam. Jose travels worldwide for various community and business activities.

CHARLES KIM is a prominent New York businessman active in promoting trade between the U.S. and Korea in a wide variety of ventures. He frequently travels to Asia in his role as President of Metro Charles, Inc. Kim is a leading figure in the New York Korean American community.

NORMAN LAU KEE is a New York attorney with the firm of Kee and Lau-Kee. His practice has made him a leading expert on immigration law--acknowledged by his appointment to the Federal Advisory Committee to the Immigration and Naturalization Service, which he chairs. Kee pursues a wide range of community activities and is a member of the Board of Directors of numerous organizations and business corporations. He served as a Human Rights Commissioner for New York under Mayor Abraham Beame.

GLENN LAU-KEE is a New York attorney involved in corporate, immigration, and international law with the firm of Kee and Lau-Kee. Lau-Kee is active in New York Chinatown civic affairs, serves on various YMCA boards, and serves on the President's Advisory Board of the Borough of Manhattan Community College, City University of New York.

CHAN TOM III is a young Chicago businessman, heavily involved in several affiliated companies. As managing officer of Chinese Trading Company and Chinese Noodle Company, he is directly responsible for these profit centers, and under his leadership, these profit centers have demonstrated remarkable growth. Tom is active in the Chinese business community aiding specifically in Chinese festivals, New Year Fundraising Dinners, and other Chinese civic activities.

RUTH WATANABE is an energetic and concerned leader of the Japanese American community in Los Angeles. Her interest in the welfare of the Asian community is exemplified in her role as Board Member and Secretary/Treasurer of the Japanese American Community Planning and Development Council.

JAMES YING is Chairman of YingCo., Inc., a diversified investment corporation based in New York City. Further, Ying serves as President of the New York Sino American Chamber of Commerce.

DR. JOHN YOUNG is Professor and Director of the Institute of Far Eastern Studies at Seton Hall University in New Jersey. Young is the author of numerous publications on Asian studies and has extensive experience with research projects in bilingual and bicultural education in the U.S. He was also one of the principal creators of the National Advisory Council to the East Asian and Pacific Affairs Bureau of the Department of State which serves as a liaiso

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AN ASIAN/PACIFIC AMERICAN PERSPECTIVE: FUTURE DIRECTIONS OF U.S. IMMIGRATION AND REFUGEE POLICY

Presented by
The Immigration and Refugee Policy
Task Force

of the

U.S.-ASIA INSTITUTE

September 1980

1015 Twentieth Street, N.W. • Suite 200 • Washington, D.C. 20036 • (202) 466-6124

AN ASIAN/PACIFIC AMERICAN PERSPECTIVE:

FUTURE DIRECTIONS OF U.S. IMMIGRATION AND REFUGEE POLICY

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INTRODUCTION

Congress and the Administration of President Jimmy Carter recognize the urgent need to formulate a new immigration and refugee policy for the future. The last comprehensive legislation, passed in 1952, has been revised many times in attempts to keep abreast of rapidly changing domestic situations as well as foreign policy considerations. The patchwork of amendments superimposed on the 1952 legislation clearly is inadequate to serve the needs of the United States.

The Asian/Pacific American community is deeply concerned with the direction of proposed new legislation. Early racist immigration laws were openly hostile to Asians. Recent immigration laws discriminate against Asians in subtle ways. Because of this concern, the U.S.-Asia Institute asked prominent Asian/Pacific American immigration lawyers to form the Immigration and Refugee Policy Task Force. The response was enthusiastic. The members of the Task Force were unselfish in giving their time and expertise, in giving the Institute *pro-bono* services in the drafting and preparation of this position paper. We owe a debt of gratitude to Task Force members—BENJAMIN GIM, BILL ONG HING, NORMAN LAU KEE, PEDRO LAMDAGAN, and DENNIS MUKAI.

We also want to express our sincere appreciation to LEE THOMAS SURH, a staff member of the Select Commission on Immigration and Refugee Policy; MUZAFFAR CHISHTI of Local 23-25 of the International Ladies Garment Workers Union; WILMA SUR, a Los Angeles attorney; and DERRICK TAKEUCHI, former U.S.-Asia Institute Administrative Director, who were valuable resource persons.

Joji Konoshima

JOJI KONOSHIMA
Executive Director
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September 1980

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I. HISTORICAL BACKGROUND OF ASIAN IMMIGRATION TO THE U.S.

During the mid-1800's, political and social upheaval in China with such cataclysmic events as the Taiping Rebellion created an "inexpensive" source to fill a labor shortage created by the economic expansion and increased job opportunities in the United States. The historical confluence of these political and economic forces at this time produced the first influx of Asian immigrants into the United States. The economic necessity first wave of immigration, however, was halted when conditions changed drastically and Chinese workers became a glut on the labor market during the post-Civil War depression.

About this time, the beginnings of increased immigration from Japan compounded the problem. After 1896 the political forces favoring Chinese exclusion, which had been nurtured in California, began mounting efforts in Washington to pressure legislators into enacting statutory restriction or prohibition of Chinese immigration. These efforts proved successful as an agreement in 1880 between the Chinese Empire and the U.S. Government allowing U.S. law to govern Chinese immigration to America resulted in the enactment of the Chinese Exclusion Act of 1882. The Act suspended the immigration of Chinese workers for ten years and denied the Chinese eligibility for naturalization. Through a series of legislative enactments over the following twenty years, Chinese immigration virtually ceased.

The Japanese began immigrating to the U.S. in significant numbers after 1884 when the Japanese government adopted emigration policies allowing its laboring classes to seek work in foreign countries. Negative reactions met the flow of Japanese immigration through a fear that another Asian group would use a contract labor system developed in Hawaii as a means of ultimately coming to the mainland United States. This apprehension created sufficient political support to bring about legislation preventing Japanese contract laborers from immigrating to the U.S. or its territories in 1885. Subsequent court cases involving Japanese immigration consistently upheld exclusion of the Japanese. In 1900 the Japanese government began denying laborers permission to immigrate to the U.S.; they did, however, continue to allow them to go to Hawaii until 1905 when this flow was temporarily halted. Japanese immigration decreased significantly after 1907 when the Japanese government entered into a "Gentlemen's Agreement" restricting emigration of its nationals to the U.S.

The U.S. imbedded Asian exclusion into its laws through the Immigration Act of 1917 and the creation of an "Asiatic Barred Zone" which prohibited all Asian ethnic groups except the Japanese from immigration to the U.S. The Japanese were not included in the group because of their exclusion by means of the Gentlemen's Agreement. They received special treatment, however, when what was unofficially known as the Japanese Exclusion Act of 1924 (Officially, the Quota Immigration Law), which barred the Japanese from admission to the U.S. for permanent residency, was enacted.

The 1917 Immigration Act and the Act of 1924 governed Asian immigration under American law until 1952. Leading up to the Immigration Act of 1952, the Chinese Exclusion Act was repealed in 1943 and the War Bride Act of 1945 allowed wives and children of American servicemen to immigrate freely to the U.S. It was, however, the 1952 Act which eliminated from our laws the complete exclusion of Asians. But the 1952 Act created a national quota system which restricted immigration by aliens indigenous to the Asia-Pacific Triangle, an area which includes the Asian continent and most nations in the Pacific Ocean. The 1952 Act was clearly designed to restrict Asian immigration to the U.S.

The remaining vestiges of statutory restrictions directed specifically at Asian immigration were finally abolished in 1965 when amendments to the 1952 Act established the present preferential system. The Amendments specifically did away with the inherent racial and national prejudices which had previously been ingrained in American immigration laws.

The effect of discriminatory laws reflects itself in the statistics for immigration to the U.S. For example, between 1910 and 1950, a combined total of approximately 193,000 Japanese and Chinese immigrated to the U.S. During this same period, total U.S. immigration was over 12,000,000. The effects of disparate treatment lasted well into the 1960's.

After the remaining vestiges of the Asian exclusion laws were effectively removed, Asian Americans could finally attempt to be reunified with family members without resorting to the fraud or misrepresentation that the racially discriminatory laws had left as their only alternative. The number of relative petitions filed for family members in Asian countries after 1968 was understandably high. Thus, the number of immigrants from those countires rapidly increased as the opportunity to finally be with one's family came to fruition. This was despite the fact that even after 1968, the prospective immigrants faced severe political restrictions on travel while their American relatives were confronted with unreasonable documentary and evidentiary requirements of proving relationships.

II. IMMIGRANTS

A. Total Numbers

It is estimated that the current total legal U.S. immigration, including quota immigrants, and immigrants not subject to quota, and non-emergency refugees, numbers approximately 450,000 annually. This constitutes only about 0.2% of the total U.S. population. This is low in comparison to earlier periods in U.S. history. During 1900-1909, average annual immigration of 820,000 represented 1.06% of the total U.S. population—over 5 times greater than the present percentage.

Currently there is a long waiting period for many immigration applicants, often as long as 14 years. We feel that present levels of immigration can be reasonably increased without straining our economy and resources.

It is therefore recommended that:

1. Provision be made to provide for reunification of families for those relative beneficiaries who are presently waiting for quota availability;

2. The future level of immigration be established in a way which balances the dual concerns of avoiding long waiting periods for family preferences, and consideration of the economic, demographic and social conditions within the United States. It is our view that the U.S. can absorb up to around 750,000 new immigrants annually without detrimental effect on the economy;

3. This level be examined and adjusted periodically as indicated by changes in the above-mentioned dual concerns;

4. This level does not include those refugees admitted as emergencies above the normal refugee flow.

B. Preference System

The United States presently uses a "preference" system designed to distribute the total numbers as to who shall have priority in immigrating. Theoretically, the higher the preference, the earlier the entry for permanent residence.

There are six preference categories.* Categories 1, 2, 4, and 5 are for family members, and 3 and 6 are for employment preference. Each preference category is allotted a percentage of the total number of quota immigrants. This system is not a true preference system but a category system with an allocation for each category. The most lengthy backlogs are in the family and relative categories. Therefore, it is common for a person with a lower preference to emigrate to the U.S. ahead of a person with a higher preference.

The numerical limitation of 20,000 for each country, and a sub-quota limit of 600 per colony has caused chronic and serious backlogs in some preference categories for many countries. Abolishing the 20,000 limit per country raises the fear that a few sending countries will dominate the use of the quotas. We feel that a higher limit of 40,000 per country will greatly, if not totally, eliminate prolonged waiting periods for relatives.

These backlogs are an indication of the demand in those preference categories from the sending country. It should also be recognized that the pattern of demand is an ever-changing one which shifts from one preference category to another and from one country to another. Therefore, there seems to be a need for a mechanism for periodic review and adjustment.

Another inequity in the present system relates to refugee policy. "Emergency refugees", or those "emergency situation" refugees admitted in numbers above established normal flow refugees (the current figure being 50,000) for compelling humanitarian reasons, as determined by the President, **should not** be counted against the normal flow of immigrants in the current or succeeding years. To do otherwise would amount to permitting the President to give a particular group extraordinary priority over other immigrants, placing the burden entirely on immigrants waiting to enter the U.S.

We feel that these problems can be alleviated through revision of the preference system. Design objectives of any new preference system should include:

1. Giving highest priority to the reunification of the nuclear or core family which should include spouse, unmarried children as well as married children and their families, parents, grandparents, brothers and sisters and their families. It has been suggested that only unmarried siblings should be the beneficiary of a visa petition for preference status. We strongly oppose this view because it will result in preventing the reunification of the family.

2. Allocating percentage level ceilings for preference categories which would minimize backlogs in all categories.

3. Reserving portions of the annual quotas for persons now covered under the third and sixth preference categories as well as non-preference.

4. Giving every nation in the world a minimum "open" allotment.

We propose that total immigration for **all categories,** but excluding immediate relatives (IR) and emergency refugees, be limited to 550,000 annually. The present national origin limitation of 20,000 per country, should be expanded to 40,000 except for Canada and Mexico which should receive additional numbers.

Three major categories should be created:

1. **Non-emergency Refugees**—The recently passed Refugee Act should be maintained with a normal flow of 50,000 annually.

2. **Family**

a. Immediate Relative (IR)—Not subject to quota limitation. U.S. citizens petitioning for spouse, unmarried children regardless of age, parents, grandparents, unmarried siblings who are accompanying a parent entering under this preference. Also a permanent resident petitioning for spouse and unmarried children regardless of age.

A limit of 350,000 should be initially set for the three preference groups listed below with the provision that unused numbers will flow down to the third category. There should be no percentage allocations for each preference group in order to give priority to the highest preference applicant.

b. First preference—U.S. citizens petitioning for married children and their accompanying immediate spouse and unmarried minor children.

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*The seventh preference—for refugees—was eliminated by passage of the Refugee Act of 1980.

c. Second preference—U.S. citizens petitioning for brothers and sisters with their accompanying spouses and unmarried minor children. Also permanent residents petitioning for parents.

d. Third preference—Permanent residents petitioning for unmarried brothers and sisters.

3. **Third Category** or **Independents** should be divided into two sections. Numbers allocated for this category shall be 150,000 plus any unused portion of the family category.

a. The first section shall permit 250 persons from each country in the world to enter the U.S. on the basis of motivation without regard to preference, wealth, or skills. The purpose of this section is to maintain the U.S. tradition of being a land of opportunity for those who are less fortunate. Provision should be made for supportive services similar to those available to refugees. We estimate this group will number around 40,000 annually.

b. The balance of the Third Category should be based on a point system with weighted points given for the following: education, skills and experience—especially if there is shortage of such skills in the U.S.—entrepreneurial experience, and managerial experience. We estimate this group will number around 110,000 annually.

C. Family Reunification

The simplest way to clear up existing backlogs is by remedial legislation. There is precedence for such action by Congress since it has been done on several occasions prior to 1965. We recommend that this be done for all relative categories.

In order to avoid lengthy waiting periods in relative preference categories in the future, we also recommend:

1. A time limitation (i.e., two years) should be placed on how long beneficiaries and their families would have to wait for a visa number.

2. Section 101(b) with regard to definition of immigration privileges derived through a "child" should be redefined to specifically include out-of-wedlock children through the father as well as through the mother. This would be in accord with modern day thought as enunciated in *Weber v. Aetna Casualty and Surety Company*, 406 U.S. 165, where Justice Powell stated that the alleged interest in legitimate families is not preserved in discriminatory classification of illegitimate children. He stated that obviously no child is responsible for his birth and that penalizing the illegitimate child was an ineffectual as well as an unjust way of deterring the parents from non-marital relationships.

3. Lawful permanent residents should be permitted to petition for parents and be entitled to preference status.

4. Section 203(a)(9) provides that a spouse or child, if not otherwise entitled to an immigrant visa with a parent or accompanying spouse, who receives a visa under paragraphs 1 through 8 of Section 203(a) is eligible for the same status as the parent. In drafting this provision, Congress inadvertently omitted conferring the same right, and admittedly higher immigration status under Section 201(b), to the parents of a U.S. citizen. Thus, we have the incongruity that a citizen who is petitioning for a brother or sister may have his niece and nephew accompany the brother or sister. But if he is petitioning for his father or mother for immediate relative status, he cannot have his brothers and sisters, even if minors, accompany them, and must resort to separate petitions for his siblings under the 5th preference. In Chinese cases the 5th preference is some six years behind. Section 201(b) or its new counterpart ought to be amended to include minor children of the parent who is being petitioned for by the United States citizen son or daughter.

5. The situation of backlogs for the British Colony of Hong Kong is quite serious today. For natives of Hong Kong, there is an approximate 12-year wait for married children and siblings of United States citizens. Spouses and unmarried children of lawful permanent residents from Hong Kong face a backlog of four to five years. The situation in Hong Kong has developed because, as a colony of Great Britain, it is entitled to only 600 visas annually.

The sub-quota system for colonies was racist in concept when it was made a part of the 1952 Act. At that time, many African, Asian and Caribbean countries were then colonies of European mother countries. This sub-quota was a device used to limit African, Asian and Caribbean immigration from those colonies. Since then, all but a handful of colonies have become independent and now have their own national limit of 20,000.

However, backlogged conditions could be eased significantly by permitting Hong Kong to use unused visas of Great Britain. Thus, no actual expansion of numerical limitations is needed to remedy this situation for Hong Kong and to prevent future backlogs.

D. Refugees

Since the fall of Vietnam and Cambodia in the spring of 1975, several hundred thousand Indochinese refugees have entered the U.S. under a series of programs based on the parole authority as authorized by the Attorney General. This situation arose because of the numerical and other limitations on the seventh preference conditional entry category. Legislation allowed eligible Indochinese parolees to adjust to permanent resident status.

Resettlement of Indochinese refugees proceeded under the Indochinese refugee program as authorized by the Indochina Migration and Refugee Assistance Act of 1975. Although the Indochina refugee program was scheduled to expire in 1977, it was extended on a four-year phaseout basis. (The phaseout was subsequently suspended and the Indochinese Refugee program was authorized at the full funding level through the duration of Fiscal Year 1979.)

The recent enactment of the Refugee Act should provide the framework for a new and more equitable policy governing the admission and treatment of refugees. Within the overall structure set out by the Refugee Act, however, the actual implementation of the purposes of the legislation will greatly affect its ultimate success.

Prior to the enactment of the legislation, the U.S.-Asia Institute sponsored a Conference with over 150 community leaders at the State Department on August 15, 1979, in the first nationwide effort to address the full range of issues raised by the flow of refugees from Indochina. The community leaders made a multitude of valuable comments and suggestions in the course of the discussions and during workshops on these subjects.

The group expressed its strong support for the President's policy on refugees. A checklist of the most significant views and suggestions offered by the Conference participants follows. Although some of these suggestions relate to matters other than immigration, we have included the full list because we feel it is constructive to cover all areas of concern to the Indochinese community.

Foreign Policy Considerations

The U.S. should deal with the principal causes of the problem by:

Focusing international attention on Vietnam's role in Indochina;

Statements of strong condemnation from top Administration officials;

A UN meeting to pressure Vietnam to treat those under its control more humanely;

Urging bilateral and multilateral donors to cut off economic assistance;

Continuing the U.S. policy of non-recognition of Hanoi.

Emigration and Asylum

Press for orderly flow from Indochina;

Give higher priority to: extended families, prisoners released from Vietnam, Cambodian refugees in Vietnam;

Provide economic assistance to countries of first asylum;

Continue 7th Fleet rescue efforts;

Assist in efforts to curtail and punish pirates who prey on refugees.

Resettlement

Liberalize U.S. naturalization requirements (e.g., eliminate requirement for two character witnesses);

Additional resources for INS and HEW to expedite processing of refugees;

Greater cooperative efforts between U.S. agencies and community efforts;

Strengthen coalition of indigenous Indochinese community groups in support of refugees;

Employ Indochinese personnel with INS;

Establish refugee information centers;

Consider special $1.00 tax check-off on IRS forms for refugee support;

Have a research component built into the INS structure to conduct scientific study of refugee problems;

Support revised INS Act;

Improve local coordination among agencies;

Establish a refugee job information bank;

Give more responsibility to local agencies for funding;

U.S. officials should travel to major centers of refugee settlement for conferences similar to the above mentioned August 15, 1979 Conference at the State Department.

E. Other — Investors, Professionals, Skill Qualifications

Investors, currently unable to enter as immigrants, are a desirable addition to the American economy and communities. They bring capital, ambition, vitality and entrepreneurial skills. In cities all over the United States, small business enterprises of recent new immigrants are revitalizing whole inner city neighborhoods which for many years have been on the decline. Investors should therefore be encouraged to come as immigrants.

In addition, backlogs in the 3rd and 6th preferences and nonpreference categories, plus the stringent labor certification process have very nearly eliminated immigrants from entering in other than family preference categories. This cutting off of non-relative immigrants has two undesirable effects:

1. It tends to limit immigrants from those countries which have not sent immigrants to the United States in recent times; and

2. It prevents people with skills which are in short supply here from immigrating.

It is recommended:

1. That a new non-immigrant category be created, for example, the "M" category, whereby an individual be allowed to enter the United States upon a *prima facie* showing of an investment in a business with a minimum capital investment of $50,000, and the employment of two U.S. citizens or lawful permanent resident workers. At the end of two years subsequent to receipt of the "M" visa, the applicant would be eligible for lawful permanent residence. This would deter those businesses that are marginal and in most instances would default within a two-year period.

2. That significant numbers of aliens be permitted to immigrate without regard to family relationships or offers of employment.

3. That the present labor certification process be greatly simplified and its purpose altered to that of simply assuring that non-relative immigrants do not possess skills which are in overabundance in the United States. Consideration should be given for a point system in which criteria are meaningful.

The Canadian point system, we feel, places too much emphasis on the applicant's pecuniary assets, education, linguistic ability to speak English or French, and prospective employment or place of employment. This type of point system would discriminate against prospective immigrants from non-English-speaking areas and would also discriminate against applicants from low socio-economic levels, who should be given a fair opportunity to immigrate to the United States to uphold the U.S. as a land of opportunity.

III. NON IMMIGRANTS

While the American government through the State Department has continually advocated an open-door policy for foreign companies to invest in the United States, and have embraced the theory of expanded investments and trade with foreign businesses, the INS, under the Department of Justice—in the Western region particularly—and certain embassies and consulates under the State Department have taken a contradictory position, laced with a strong enforcement interpretation of existing regulations.

Section 101(a)(15)(e) and Section 101(a)(15)(1) of the Immigration and Nationality Act were enacted to facilitate the establishment of foreign businesses in the United States and the admission of essential foreign personnel. The spirit and letter of the laws related to non-immigrant business investments, trade, and admission of essential personnel, were intended to encourage individuals and companies to invest in trade with America.

The INS and certain American consulates have, as stated, issued severe restrictive enforcement guidelines, have viewed the mentioned laws as restrictive in nature, and intended to limit foreign business investments except for the largest multi-national corporations. Their rationale is that they are protecting the American labor market. It must be remembered, however, that foreign businesses employ countless American workers, pay taxes, and help to alleviate the balance of payments by their continued interaction with foreign operations.

The spirit and letter of the law is clear, and that is to encourage the investment of foreign capital into the United States. Neither the INS nor the individual American consulates have been mandated with the power to legislate or to interpret laws enacted by Congress, or to interpret treaties agreed upon by the respective signatories. It is strongly urged that the spirit and letter of the laws pertaining to non-immigrant business interests be explicitly stated to encourage and facilitate active foreign business interest and their personnel into the United States. The mentioned laws should be given a broad interpretation that would be positive for these business interests, as they are also in the best interest of the American people

Remarks in this section are confined to specific issues which have caused problems for various classes of non-immigrant visitors from Asia, and in particular, Japan. The expanding trade, business and cultural relationships between Asian nations and the U.S. have been significantly affected by these problems.

A. Extension of Visas

The arbitrary and unreviewable denial of extensions for B-1 (Business Visitors) visas has resulted in severe financial losses to negotiating foreign and domestic companies. Extensions should be granted to B-1 visitors consistent with their business purpose, and denials of extensions of all visitors' visas should be accompanied with a notice of findings and an opportunity to submit evidence at a hearing.

Treaty traders (E-1) and Treaty Investors (E-2) visas are extended in one-year increments for an indefinite period. There is no reason not to grant such persons "duration of status" visas commensurate with their intended purpose in the U.S., and subject to submission of annual status reports to INS. This system has been a successful method for handling foreign students and has substantially reduced INS workloads.

B. Foreign Entertainers (H-1 Visas)

H-1 temporary workers are persons of 'distinguished merit and ability", a term which is ill-defined and has resulted in slow and improper adjudications by INS with regard to foreign entertainers who are not generally well-known in the U. S. Huge financial losses have occurred, performances cancelled, and the industry badly affected. Bureaucratic delays are particularly unjustifiable with regard to eminent foreign entertainers who are in the U.S. for short periods and whose interests would not be served by remaining here past their scheduled time for departure. It is recommended that H-1 visa petitions of foreign entertainers be adjudicated in the United States, or at consular posts in the home country of the applicants, where adjudicators will be much more familiar with the applicant's credentials. At the same time, consular adjudications must be made reviewable as discussed on page 19 herein.

C. Intra-company Transferees (L-1 and Definition of Affiliates)

For purposes of permitting intra-company transferees, the definition of an "affiliate" company has become confused and uncertain due to differing interpretations among the INS regions. A uniform definition which conforms with contemporary international business standards will reduce the losses which have resulted from curtailed expansions of business operations which this confusion has caused.

D. Change of Status—Notice of Findings and Right to Hearing

There have been many instances where visitors from other countries have been admitted to the U.S. for various non-immigrant purposes, and have subsequently decided to change from one non-immigrant classification to another. An example is Japanese corporations doing business in the U.S. who offer employment to qualified foreign students after graduation to fill managerial or skilled positions within the corporation. This situation often occurs when bilingual skills along with management or other skills are required.

To satisfy INS regulation pursuant to Section 248, it is necessary to make a request for a change in visa classification to, in many cases, an E-1 classification from the INS. Only *after* an applicant's case is denied is an applicant or his prospective employer afforded a right to rebut the INS position. This lack of notice before denial has discouraged many companies from seeking highly qualified personnel easily accessible to them. They have been forced to incur the additional expense of transferring additional personnel from their company operations abroad.

A more equitable policy would be to issue a notice of findings and to allow the applicant an opportunity to appear to present evidence prior to final adjudication.

IV. ISSUES OF PARTICULAR CONCERN TO ASIAN/PACIFIC AMERICANS

A. Documentation for Chinese (Vital Statistics)

Due to an historical lack of birth and marital records in mainland China, Chinese in the United States today seeking to be reunited with family members abroad experience considerable difficulties in petitioning for their relatives.

For most non-Chinese, the process is simple. If the relative abroad falls in an immediate relative or preference category, a petition is filed at INS with evidence of the relationship in the form of birth certificates, marriage certificates, family registries.

In contrast, when a Chinese person files such a petition, since such documentary evidence is not available, a long list of "secondary" evidence of the relationship must be submitted to INS in support of the petition, or else the petition will be returned to the petitioner. The secondary evidence required usually takes the form of photographs, old correspondence, school records, money receipts, affidavits, blood tests, and old Hong Kong documents if Hong Kong was ever a place of residence. The burden to produce this evidence has always fallen on the shoulders of the petitioner. More often than not, the petitioner is advised to correspond with the relative abroad and to request the relative to obtain documents in China. The request is extremely difficult for the mainland Chinese to meet and is extremely unreasonable and unfair given the fact that most of those relatives remain in small villages and are not particularly mobile or familiar with formal documents. This also results in an added delay in processing time for Chinese petitions.

Normalization with mainland China has not, for the most part, alleviated these problems. The large numbers of emigrants recently from China are generally persons who have been beneficiaries of approved petitions for five to ten years. Many thousands were permitted out of China immediately after normalization but are now stranded in Hong Kong because of the terrible backlogs that have been created for natives of China. For others seeking to leave China today to join relatives in the United States, the problems with proof of relationship remain the same.

There are many inconsistencies in the secondary evidence situation. Often INS examiners do not realize that a document produced by one petitioner is not easily obtainable or was never possessed by other petitioners. INS examiners themselves cannot give a definitive list of what will be required of given petitioners. We recommend that INS issue Operating Instructions which recognize the difficulty of obtaining secondary evidence and which establish definitive guidelines for the production and evaluation of such evidence.

B. Filipino War Vets and FMG's

During World War II, thousands of individuals who were natives of the Philippines, England, Iceland, North Africa, and the islands of the Pacific fought in the Armed Forces of the United States. In 1942, Congress extended the benefits of United States citizenship to those individuals through an amendment to the Nationality Act of 1940. Between 1943 and 1946 naturalization examiners, appointed to confer those benefits on noncitizens outside the jurisdiction of naturalization courts, traveled from post to post through England, Iceland, North America, and the islands of the Pacific naturalizing thousands of foreign nationals pursuant to the mandate of Congress.

The story of the Philippines was different. After the Japanese occupation in the Philippines had ended, the American Vice Consul was authorized to commence naturalization proceedings in 1945. However, in response to the Philippine Government's concern that Filipino men would leave their native country after being granted United States citizenship, the INS soon after recommended to the Attorney General that authority to naturalize be revoked in the Philippines. The Attorney General approved the recommendation on September 26, 1945, and the authority of the Vice Consul to naturalize alien servicemen immediately stopped. Because of this action, there were no authorized naturalization representatives in the Philippines. With no means available to become naturalized, most Filipino servicemen lost their opportunity to apply for U.S. citizenship.

In 1973, the United States Supreme Court dealt a devastating blow to these Filipino veterans of the Commonwealth Army and Philippine Scouts who had served so valiantly for the United States. In *INS v. Hibi*, 414 U.S. 5 (1973), the Court denied the naturalization petition of a veteran because he had not filed by December 31, 1946, when the relevant law expired, even though the United States had failed to inform him of his right to citizenship and had failed to place a naturalization officer in the Philippines during a long critical period. In this regard, the Court determined that there had been no "affirmative misconduct" on the part of the government.

Armed with new legal theories and additional evidence of "affirmative misconduct", a group of Filipino war veterans again sought naturalization benefits in 1975. In *Matter of Naturalization of 68 Filipino War Veterans*, 406 F.Supp. 931 (N.D. Cal. 1975), a federal district court judge found that eight of the petitioners had demonstrated clear evidence of affirmative misconduct, *viz.*, evidence that they had indeed attempted to apply for naturalization prior to December 31, 1946, and either no action was taken on their applications, or they were told that no action would be taken on their applications. The district court found that although 53 of the petitioners had not taken timely steps to be naturalized before December 31, 1946, they had been denied due process of the law by the Government's failure to station in the Philippines a representative of INS authorized to naturalize members of the American armed forces, as had been done in other parts of the world.

Such a position serves as sad commentary to the abandonment of Filipinos who came to the aid of the United States in time of war and who, in many cases, fought side by side with Americans.

The 1976 legislation requiring Foreign Medical Graduates (FMG's) to take either the VQE (Visa Qualifying Exam) or Parts I and II of the National Boards before obtaining permanent residence was inserted in a bill "to promote quality health services." The impact was felt almost entirely by Asian doctors from the Philippines, Taiwan, Hong Kong, and India who had come to the U.S. as exchange interns and residents to staff U.S. hospitals at a time when their services were critically needed to fill the voids in many understaffed facilities.

Many of these doctors had passed state medical boards, established medical practices, and applied for permanent residence under Section 203(a)(3), third preference status. Because of the backlogs in the third preference category—particularly for those born in the Philippines—many doctors with approved petitions were waiting for adjustment of status when the law was passed. Although they had been admitted to practice, they would be required to take the Parts I and II of the National Boards, which are usually taken by second and third year medical students. An analagous situation would be to ask a lawyer who had been admitted to practice more than five years earlier to take the bar exams all over again.

We recommend that Congress pass a savings clause which would exempt doctors, who had already been admitted to practice in their respective states on the effective date of the law, from the requirement of taking the VQE or Parts I and II of the National Boards for permanent residence.

C. Korean Citizens Employed by the U.S. Army in Vietnam

There exists a substantial number of Koreans who were employed by the United States Army in Vietnam, as civilian workers, and were thereafter paroled into the United States as Vietnamese refugees upon the fall of Saigon. These people were paroled into this country for an indefinite period of time with employment authorization. However, even though these Koreans entered with the Vietnamese refugees they were not eligible for subsequent adjustment of status to lawful permanent residence.

The Koreans in this situation are not Vietnamese nationals but are citizens of Korea as indicated on their parole document. Their families are in Korea and they consider Korea their homeland. Although they legally reside in this country and can be employed here, they are not permanent residents and cannot petition for their families, therefore causing a disruption in the family unit. Most of the Koreans have lawfully resided in the United States for many years and established themselves as part of the fabric of this society. Therefore, the most equitable treatment of these individuals is to permit them to apply for permanent residence in the same manner as Vietnam refugees.

D. Language Problems in Naturalization

The English literacy requirement prevents substantial numbers of elderly Asian/Pacific immigrants from naturalization, and thus denies them the right to vote, to be free from numerous grounds for deportation, and to hold any Federal and many State and local civil service positions. We feel that there is ample justification for eliminating this requirement for citizenship based on the following facts:

—There is no Constitutional requirement for English literacy and indeed, the literacy requirement tends to defeat the efforts of the framers of the Constitution to insure diversity among the states.

—Most non-English-speaking immigrants participate fully in their communities, and are able to remain abreast of current events through non-English media.

—Congress, in its 1975 amendments to the Voting Rights Act, endorsed a policy of participation in government by non-English proficient citizens by requiring state and local governments to publish ballots and other voting materials in non-English languages.

Although there is now a statutory waiver of the English literacy requirement for petitioners over age 50, there is an additional requirement that such a petitioner have been a lawful permanent resident for 20 years. This latter requirement effectively excludes large groups of immigrants, such as elderly Chinese who have lived in the U.S. 40 or more years but who have adjusted their status less than 20 years ago.

Accordingly, it is recommended that:

1. The waiver for elderly be amended to require a shorter period of presence in the U.S. if the applicant entered at an advanced age.

2. Short of statutory amendment, the INS minimize the adverse impact of this requirement by:

a. Recognizing a certificate of completion of an English as a Second Language course in lieu of an examination for English proficiency;

b. Conduct examinations for knowledge of American history and government in the applicant's native language.

E. Exclusion of Permanent Residents Receiving SSI and the Reentry Doctrine

A situation which developed in the summer of 1978 serves as an excellent example of present INS policy which discriminates solely against Asians as a matter of discretion.

In August of 1978, immigration inspectors in Honolulu began a systematic interrogation of elderly Asians many of whom had been lawful permanent resident aliens of the United States for many years. They were generally returning from visits abroad which were no more than 30 days in length. The interrogation in Honolulu has gone far beyond the customary questioning as to purpose and length of stay. Rather, it focuses on whether or not such Asians are, or have ever been, recipients of Supplemental Security Income (SSI) public assistance benefits. SSI is a subsistence program for the elderly and disabled needy persons made available to citizens and lawful resident aliens alike. If SSI has ever been received by the returning alien, immigration inspectors take possession of the person's alien card and passport, and instruct the person to report for further inspection and interrogation in the INS district office of residence, e.g., Los Angeles, San Francisco, Seattle, Boston. At the subsequent inspection, these elderly Filipinos, Chinese, Koreans, and Japanese are informed that they are excludable from the United States under Section 212(a)(15) of the Immigration and Nationality Act as "public charges." They are generally given three alternatives: go back to their native country, request an exclusion hearing, or terminate SSI benefits and post a public charge bond of $5,000.00.

It is important to note that the INS is dealing here with returning permanent resident aliens and not with first-time immigrants or with undocumented aliens. The supposed authority for INS to reimpose the public charge grounds for exclusion each and every time a lawful alien reenters the United States stems from a concept termed the "reentry doctrine." (See Section VI A for a separate discussion of the "reentry doctrine.") However, the reentry doctrine heretofore has not been used to exclude returning resident aliens who have sought public assistance. It is merely a matter of relatively new policy on the part of the INS instituted in the summer of 1978 which has brought about this result.

In the more than 500 reported cases, there has been no question that the person had a right to apply for and to receive SSI under Social Security Administration regulations. There have been no allegations of fraud. It is equally clear that if these persons had not proceeded abroad, they could not have been deported under INA Section 241(a)(8). Under SSI rules, recipients are permitted to leave the country for periods up to 30 days without affecting SSI eligibility and, indeed, in many instances the persons have been informed by Social Security representatives prior to departure that there was nothing to worry about. However, these persons have unwittingly walked into the trap of the reentry doctrine—a trap never previously set for lawful permanent residents receiving public assistance.

Although former INS Commissioner Castillo issued guidelines in May of 1979 to deal with these cases on a more humane level, and one such alien has successfully appealed his case to the Board of Immigration Appeals, the guidelines and recent cases have been ignored by immigration officials in Honolulu where the root of the problem exists. The harassment of elderly Asians continues there while such questioning has not been directed to other immigrants at other ports.

As previously noted, this procedure marks a sharp change from previous INS policy throughout the country. This simply has never been done before, and even today is not happening in other parts of the country. (There have been five or six cases reported that arose in San Francisco. All of the aliens involved were elderly Asians.) Because most lawful permanent resident Asian travelers return through Honolulu, the impact of the new policy has fallen squarely on elderly Asians only. The action has caused great alarm in Asian communities throughout the U.S.

Neither racism nor discrimination based on national origin finds impetus in the present language of the Immigration and Nationality Act, but the exclusion of elderly Asian SSI recipients is a vivid example of selective enforcement. INS officials in Honolulu (and San Francisco) should be ordered to stop their questioning of elderly Asians on the issue of SSI.

F. Use of Special "Chinese Unit" in INS

Another example of discrimination by the INS is the "Chinese Unit" within the examinations section of the San Francisco District Office which handles all Chinese immigrant visa applications, strictly scrutinizing and consequently delaying the processing of such applications. The reason given by the INS spokesman for the existence of this unit was "the long history of fraud in such applications from Chinese." While not denying the past existence of such fraud, we note that it occurred during a period of virulent discrimination against Chinese when there was no possibility of entry by Chinese without such fraud. These conditions no longer prevail and this special processing unit is no longer justified.

Governmental agencies which administer immigration laws must remain constantly aware of the tendency for legal, benign discrimination to become insidious and unjustified. In the SSI example, the fact that only one port of entry adopted the exclusionary policy had a biased impact on particular Asian groups. In the Chinese Unit example, a practice once justified by circumstances has been carried over beyond its useful life and has become a destructively discriminatory practice. Federal agencies must affirmatively act to avoid such conditions, and should structure a watchdog mechanism with liaison to communities to avoid this kind of bias.

G. Amnesty and Employer Sanctions for Illegal Immigrants

Undocumented aliens in the U.S. have, as a group, made substantial contributions to the economic and social growth of the United States. At the same time, they are in a very vulnerable and insecure situation because of their illegal status. We support the legalization of all such aliens who entered the U.S. as of a date as current as practicable, up to the date of the recommendations of the Select Commission for such legislation.

Care must be taken in designing such a legislative program to include not only those who entered without documentation, but those who entered legally but have overstayed their visas.

While we recognize the need to take steps to discourage future illegal entries to the U.S., we do not support the imposition of sanctions for employers who knowingly hire illegal migrants. Even with safeguards such sanctions would inevitably lead to employers viewing Asians, Hispanics, and those with foreign accents with suspicion, and to a reluctance to hire such persons.

The key to discouraging the hiring of illegal migrants is a firm commitment on the part of the Federal Government to effectively enforce existing laws with regard to wages, hours and working conditions. Without this firm commitment, no progress in discouraging employment of illegal migrants can be expected regardless of any new sanctions on employers. Strict enforcement of existing work standards should therefore be tried as a means of discouraging such employment before any consideration is given to establishing new grounds for sanctions.

In the event that any employer sanction system is enacted, it must be accompanied by a system whereby an alien or employer may readily and speedily obtain official proof of eligibility to be employed. Some of the criteria to be used in issuance of these documents of eligibility to work should include (1) the applicant has an application for permanent residence pending before INS or (2) the applicant has an approved visa petition in which the projected waiting time is less than two years.

H. Binding Affidavits of Support and SSI Eligibility

HR 3236, an act to amend Title II of the Social Security Act to provide better work incentives and improved accountability in the disability area was passed by the House and sent to the Senate. There, two very significant amendments relating to the immigration process and the rights of new immigrants were added to the bill and passed by the full Senate by a vote of 92-0. The bill has been sent to conference where the amendments will be reviewed.

The first amendment—Section 504—of the act provides a three year residency requirement for SSI eligibility. Included are safeguards against certain unforeseen medical problems.

The second amendment—Section 601—amends the Immigration and Nationality Act to require legally binding affidavits by sponsors. The amendment contains safeguards against certain unforeseen medical problems and unforeseen financial problems of the sponsor.

We support the elimination of abuse of SSI by new immigrants whose sponsors have adequate means to support them. However, we feel that the two Senate amendments are unduly harsh. Instead we advocate HR 4904[*] which provides that the income and assets of the sponsor are deemed to be income and assets of the alien SSI applicant. This is a more humane bill and will not cause protracted immigration processing which would be detrimental to family reunification.

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[*] After the drafting of this paper, Congress passed the provision.

V. IMMIGRATION PROCESS AND ADMINISTRATION

A. Commitment Needed for a More Effective INS

Recently, the Immigration and Naturalization Service has been the subject of Congressional and public scrutiny. Recent disclosures of inefficiency, corruption, and brutality have resulted in low public esteem as well as low INS employee morale. Instead of attempting to discuss all the problem areas, this section focuses on several of the more basic issues in INS organization and administration.

1. The problem of inefficiency is due in part to the fact that the administrative structure of the INS is laid out according to an antiquated statute, which delegates responsibility to three government agencies. The Department of Justice is charged with the administration of the immigration and nationality laws concerning aliens in the United States (Section 103), while the State Department administers immigration and nationality laws relating to those aliens outside the United States. The Labor Department's role is to approve or disapprove labor certifications in cases of aliens eligible for 3rd, 6th and nonpreference visas (Section 212(a)(14)).

The difficulties in operating under such a fragmented INS system have been exacerbated by the lack of Congressional and Administration support to the agency, despite its growing responsibilities and caseload, and serious enforcement problems.

The weak administrative structure of the INS has led to a number of problems:

—**duplication of effort and inconsistency in rulings**—The issuance of a visa, whether immigrant or nonimmigrant, by the American consul can be challenged by the INS inspector at the port of entry (Section 221(h)). On the other hand, approval of a visa petition by the Immigration and Naturalization Service pursuant to Section 204(b) can be frustrated by the American consul who may refuse to issue a visa on the basis of nothing more than that he "has reason" to believe that such alien is ineligible for such visa (Section 221(g)). Such duplication and inconsistent rulings even affect United States citizens. Chinese who have been documented by the Department of State, after exhaustive investigations, as derivative United States citizens through the issuance of a passport have been effectively denied the right of citizenship by the INS, which holds that the issuance of a passport and the initial admission by the INS of that person as a citizen does not necessarily establish that person's citizenship when he later petitions for a relative. *(Matter of H-H, 3 I&N 680).*

—**delays, lost files and other problems in case processing**—The present fragmented system of administering the immigration laws leads to intolerable delays. For example, aliens who are eligible for waivers on grounds of excludability such as previous deportations, convictions of crimes, prostitution, fraud and misrepresentation, must interrupt their administrative processing before the consular officers while the waiver applications are referred to the INS for decision. This is time consuming and interruptive of orderly process in the administration of immigration laws.

Lost and misplaced files have been a most serious problem, causing delays, wasted staff time, public and employee frustration. Computerization and other modernization has only recently been introduced into an agency which processes millions of files each year and has contracts with millions of clients.

2. There is a great disparity in certain INS postions between job responsibility and job qualifications. This is evidenced most glaringly in the adjudicator and the general attorney positions in the Citizenship Unit. Adjudication requires a high degree of technical and legal proficiency and involves making decisions which profoundly affect the life of an applicant and his family. Yet these positions are often filled by people with little or no professional background or training.

In contrast, the work of citizenship examiners, or general attorneys, is largely routine, not demanding of technical and legal skills. Recently several INS offices have used paralegals to conduct the main part of naturalization interviews under supervision of a general attorney. This is a clear indication that the level of skills required in the major part of the naturalization process does not warrant the services of a professional general attorney.

3. There is a need for a truly independent immigration judiciary. The Immigration Judges in the INS invariably and very naturally come from the ranks of INS trial attorneys. Some judges who were formerly trial attorneys find it difficult to drop their prosecutorial attitude.

Moreover, in order to deal with the large caseload, Immigration Judges sometimes rely on trial attorneys for informational briefings. We recommend that the immigration judiciary be given more staff support in order to maintain its independence. We feel that using a system of law clerks and secretaries such as that found in civil courts would be a good alternative.

We also recommend that steps be taken to insure that the immigration judiciary be drawn from a broader base of qualified lawyers both from within and outside of the INS.

Recommendations

1. It is recommended that all the present functions of the Department of State, the Immigration and Naturalization Service, and the Labor Department, be concentrated under one agency, i.e., the Immigration and Naturalization Service. This will (1) eliminate the present duplication, waste of time, energy and resources, (2) eliminate as much as possible conflicting interpretations of the law, (3) eliminate the horrifying spectre of unreviewable, arbitrary, and conflicting decisions which may deny American citizens and aliens alike the privilege of family reunification. A decision of the INS on visa petitions, as contrasted to the American consul's, can be reviewed by the Board of Immigration Appeals and eventually in the federal courts.

We strongly urge that immigration and refugee policies be recognized as matters of national importance and be administered by an agency which should no longer be treated as a stepchild of the Department of Justice. The INS must have adequate budget and management support in order to accomplish its mission.

2. Each professional position in the INS should be reviewed as to the appropriateness of the qualifications to the responsibilities of the job. Where necessary, qualifications should be revised or spelled out more explicitly to insure that each person's skills are adequately and appropriately used.

3. Steps should be taken to form the immigration judiciary from a broader base of qualified lawyers both from within and outside of the INS. The immigration judiciary should also be given more staff in order to eliminate their reliance upon trial attorneys. We recommend using a system of law clerks and secretaries such as that used in civil courts.

B. Labor Certification

The administration of its portion of the immigration laws by the Labor Department has been a fiasco. Most of their decisions have been reversed in court and the Department has been held up to ridicule for its pettiness, nitpicking, and unrealistic regulations which are allegedly designed to protect the American labor market. The notion that third preference aliens and sixth preference aliens, at most a total of 58,000 aliens per year, can significantly impact on a labor force of a hundred million has led the Labor Department to fashion restrictive, confusing, highly technical regulations concerning advertising, posting, and recruitment efforts, all of which have made a lot of work for lawyers, but which have done little to fulfill the Labor Department's purported function. Even the Department recognizes this fact. A high-ranking official of the Labor Department has stated that the labor certification program, as administered by the Department, has been a "futile waste of effort." (See remarks of Richard Schubert, Deputy Secretary of Labor, Hearings Before Subcommittee on Immigration, Citizenship and International Law of the House Committee on the Judiciary, 94th Cong., 1st Session (Pages 118-120, Feb. 4, 1975)).

Recommendations

We feel that labor certification determinations and decisions should be the responsibility of the Department of Labor inasmuch as the numerous court decisions have resulted in a body of law which is reasonable and workable. However, we feel that the present practice of INS examiners reviewing the application for the labor certification is wasteful duplication, and should be eliminated as an operating procedure of the INS.

C. INS Must have Efficient Methods to Replace Lost or Misplaced Alien Cards

One of the most difficult problems confronted by a permanent resident is to replace a lost or misplaced alien card. Sometimes INS fails to mail it to the alien at the proper address. The INS considers the issuance of alien registration cards low priority and the application for replacement sometimes takes one or two years. Therefore, it is recommended that:

1. A system of address verification cards be employed before issuance of the card in order to minimize the possibility of losing the card in the mail.

2. The INS give a higher priority for replacement of documents.

D. Local Law Enforcement Agencies' Involvement in Immigration Enforcement

There are both civil and criminal provisions in the Imigration and Nationality Act. Only federal immigration officers have the authority to enforce the civil and criminal provisions. INS has in general requested state authorities to refrain from enforcing the criminal sanctions. Nevertheless, the Attorneys General of at least two states, California and Texas, have informed state and local officers that they feel there is such authority on a non-federal level.

As a result, the state or local officers who are untrained in the subtleties of who is rightfully in the United States, often violate the rights of lawful aliens or even citizens in attempting to enforce the immigration laws. Or even worse, many local officers use this authority as a guise to traumatize Hispanic, Asian, African and other ethnic groups.

We recommend that legislation be passed to explicitly prevent state and local law enforcement officials from trying to enforce any provision of the Immigration and Nationality Act.

E. Waiver of Adjustment of Status Prohibition for Aliens Who Worked Without Permission

Under Section 245(c) a person cannot apply for permanent residence in the United States, *viz.* apply for adjustment of status without having to exit from the country, if he or she has worked without permission prior to filing the application for permanent residence. This rule is intended as a punishment for having worked without permission. However, it creates an unnecessary financial burden on the beneficiaries who must travel back to their native countries or Canada. Exception to this rule is made for parents, minor children, and spouses of United States citizens. However, Section 245(c) does not provide for any exceptions for parents, minor children, and spouses of permanent residents. Nor does it allow exceptions for humanitarian reasons, where, for example, a person must work to prevent other family members from seeking public welfare assistance.

It is urged that exception to the exit requirement be extended to spouses, parents and minor children of permanent residents and that exception for humanitarian reasons be added to allow flexibility in situations of great hardship.

F. Streamlining the Naturalization Process

Senate Bill 1763—The Immigration and Nationality Efficiency Act of 1979—provides for several revisions to the naturalization procedure which we favor. Section 15 of that Act modifies certain residency requirements for naturalization. It would allow the spouse and unmarried dependent sons and daughters, who are members of the household of a lawful permanent resident whose employment requires him to be abroad, to receive beneficial treatment with respect to the period of continuous residence in the United States required for naturalization. Currently such benefits are limited to the principal alien. The Department favors this provision.

Sections 16, 17 and 18 are key provisions of the bill relating to naturalization. They eliminate all references to the requirement that a petitioner for naturalization be accompanied by two witnesses when he files his petition for naturalization in court prior to a final hearing on the petition. Examination of accompanying witnesses is time consuming, unnecessary, and unproductive. Witnesses selected by the petitioner are unlikely to reveal his faults, if any. Moreover, when necessary, the INS can obtain information about the petitioner's fitness for citizenship through its own investigation.

Many district offices have been plagued by backlogs in the naturalization section. The elimination of the witness requirement would result in manpower savings, and the time saved could be applied to reducing backlogs and to performing other more useful functions in the naturalization area.

Section 19 of the bill eliminates the requirement for a thirty-day waiting period between the filing of a petition for naturalization and the final court hearing on the petition. The mandatory thirty-day waiting period was intended to assist the government in conducting inquiries into the petitioner's qualifications for naturalization. However, as a practical matter, all necessary inquiries will normally have been made between the day of submitting initial applications to the INS and the date on which the applicant is scheduled to appear for a preliminary examination and the filing of a petition for naturalization. If at any time factors appear which require further investigation, an inquiry will be undertaken and the final hearing will be delayed until its completion. The amendment will eliminate the need for the applicant and the naturalization examiner to make a second trip to court thirty days or more after the filing of the petition.

We recommend that this Act be passed by Congress as soon as possible.

VI. FUNDAMENTAL RIGHTS

A. Reentry Doctrine

Background

The grounds for exclusion under the Immigration and Nationality Act are numerous and represent years of *ad hoc* Congressional actions directed at closing the doors of the United States to those persons deemed unfit to enter. **See** Immigration and Naturalization Act (hereinafter "INA") Section 212(a). The grounds for exclusion provide for the denial of entry to aliens, for example, who are criminals, subversives, communists, insane, polygamists, unhealthy, illiterate, drug addicts, or likely to become public charges. Thus, even though an alien may meet the preliminary qualifications to immigrate to the United States as an immediate relative of a U.S. citizen or by falling within a preference category, if the alien falls within any grounds for exclusion, he will be denied admission unless a discretionary waiver, available under certain circumstances, is granted by the Attorney General.

Many of these grounds for exclusion can be traced back to times in our history when strong feelings of racism and political paranoia pervaded the nation. This discussion is not, however, an attack on the exclusionary grounds themselves, but rather a critique of an immigration law doctrine—the "reentry doctrine"—which relates to the exclusionary grounds to deport or deny readmission to lawful permanent resident aliens who have temporarily proceeded abroad.

The "reentry doctrine" provides that an alien, including an alien who is already a lawful permanent resident of the United States, (i.e., in possession of an alien registration card), is subject to the exclusionary grounds each and every time he enters the United States. Although such a principle is not explicitly stated in the INA, this statutory construction has resulted from a reading of Section 101(a)(13) of the INA which defines "entry" as "any coming of an alien into the United States," together with Section 212(a) which provides that aliens "shall be excluded from admission" if the grounds for exclusion are not satisfied. The interpretation that every attempted "entry" is equivalent to an application for "admission" and results in the reentry doctrine has been upheld by the Supreme Court in *Rosenberg v. Fleuti*, 374 U.S. 449 (1963).

Thus, a lawful permanent resident who commits an act or who falls into an excludable class after initially immigrating, although not serious enough for deportation, may nevertheless not be readmitted if he leaves the country temporarily because that act or class falls within one of the grounds for exclusion. This frequently occurs because the grounds for deportation under Section 241(a) of the INA are less encompassing and more difficult to meet than the grounds for exclusion.

Examples of the operation of the reentry doctrine are plentiful. A lawful permanent resident who is convicted of a petty theft is not deportable. However, if he leaves the country for a vacation and then attempts to return, Section 212(a) of the INA would operate to exclude the resident alien. Similarly, a permanent resident who, after initial immigration, becomes bankrupt and needs public assistance cannot be deported; but if he leaves the country to visit an ill relative, he would be excludable upon return under Section 212(a)(15) of the INA. **See** e.g., *United States ex rel. Minuto v. Reimer*, 83 F.2d 166 (2d Cir. 1936).

Even if the facts rendering the returning resident alien excludable are not made known to the inspecting immigration border officer and the resident alien is readmitted, once the facts are made known to immigration officials, deportation proceedings can be instituted against the person under Section 241(a)(1) of the INA as one who "at the time of entry was within one or more of the classes of aliens excludable by the law . . . ." Since the reentry of such an individual is, by definition, an "entry", the cited ground for deportation would apply to a returning lawful resident.

The principles of the reentry doctrine also come into play under Section 241(a)(4). Under that section, an alien who is convicted of a crime of moral turpitude "committed within five years **after entry**" (emphasis added) may be deported. Thus, a lawful permanent resident of the United States for ten years who proceeds abroad, returns, then is convicted of a crime involving moral turpitude four years after the **reentry** is deportable under this section. This is in spite of the fact that the alien may have been a lawful permanent resident for 14 years. **See** e.g., *Munoz-Casarez v. INS*, 511 F.2d 947 (9th Cir. 1975).

The harshness of the reentry doctrine was recognized by the Supreme Court in *Rosenberg v. Fleuti*, supra. There the Court carved an exception to the strict definition of entry and held that in order for the reentry doctrine to apply, the lawful permanent resident must have intended "to depart in a manner which can be regarded as meaningfully interruptive of the alien's permanent residence." 374 U.S. at 462. However, for the most part, the Immigration and Naturalization Service and the Board of Immigration Appeals has limited the *Rosenberg v. Fleuti* case to its facts, namely, an absence of "about a couple of hours" duration.

The reentry doctrine should, therefore, be legislatively eliminated from the Immigration and Nationality Act in order to effectively eliminate its "harsh consequences" recognized by the Supreme Court. The doctrine operates to exclude or deport lawful permanent residents who unsuspectingly leave the United States for a brief time. No warning is given to such resident aliens who could not be deported if they had not departed from the United States temporarily. It is an anomaly in our immigration laws. **See, generally**, Gordon and Rosenfield, *Immigration Law and Procedure*, Para. 2.3(e).

Recommendation

The reentry doctrine can easily be eliminated legislatively. The definition of "entry" under Section 101(a)(13) of the INA, 8 U.S.C. §1101(a)(13), could be changed to specifically exclude the return of lawful permanent residents from temporary absences abroad. (Note for example, that for naturalization purposes, Section 316 of the Act permits absences of up to six months without affecting the residency requirement.) Also, Section 212(a) of the INA, could be amended to include the following underlined changes:

> Except as otherwise provided in this Act, the following classes of aliens (other than aliens who have been lawfully admitted for permanent residence and who are returning from temporary

> visit abroad) shall be ineligible to receive visas and shall be excluded from admission to the Unites States.

Such a revision would carry out the true spirit of the Supreme Court's sentiment in *Rosenberg v. Fleuti* and eliminate the harshness of the reentry doctrine.

B. Deportation Process

1. Statute of Limitations

The present immigration statutes do not provide any statute of limitations for deportation. As long as the person is not a citizen, even though he may have been a lawful permanent resident of the United States for twenty-five years, he is deportable if he falls within one of nineteen deportable classes. INA Section 241(a). **See** e.g., *Lieggi v. INS*, 389 F.Supp. (N.D.Ill., 1975) reversed without written decision at 559 F.2d 530 (7th Cir. 1976); *Carreon-Hernandez v. Levi*, 543 2d 637 (8th Cir. 1976); *U.S. v. Walus*, 453 F.Supp. 699 (N.D.Ill. 1978).

The absence of a statute of limitations is inconsistent with the criminal laws of most American jurisdictions. Thus, a humanitarian statute of limitations of perhaps five or ten years should be included in at least some, if not all, of the deportation provisions.

A basic principle of criminal law and administration is a belief in rehabilitation and a policy that a person who has committed a wrong should not be forever punishable. While the immigration laws are considered civil in nature, their effect is very severe due to the draconian punishment of permanent exclusion from the country and separation from family, except in limited circumstances when family members may petition for a waiver. Consider the following examples: A person guilty of knowing possession of a few grams of marijuana or opium, although the spouse or parent of a United States citizen, is forever excludable or deportable under Section 212(a)(23) and Section 241(a)(11). The ameliorative provisions for convicted persons who have been granted pardons or recommendations for non-deportation by the sentencing judge do not apply to narcotics offenders, Section 241(b). Similarly, persons who have committed fraud under Section 212(a)(19), and persons convicted for even petty crimes involving moral turpitude, or convicted for prostitution under Sections 212(a)(9), (10), and (12) are forever excluded regardless of how long ago the crime was committed unless they can apply for a waiver because of having a spouse, parent or child who is a United States citizen.

These severe penalties should be ameliorated by providing a five-year statute of limitations, so that if a person is not eligible for a waiver, after five years the grounds of exclusion would not apply to exclude or deport the person. This would be in keeping with INA Section 246 which provides that if a person adjusts his status in the United States under Section 245, his status is not cancellable on any grounds unless such proceedings were commenced before the five year period.

In addition to the absence of a statute of limitations, two additional incongruities exist in the INA.

An alien who has committed fraud or misrepresentation and is excludable or deportable may obtain a waiver if he is the spouse, parent or minor child of either a United States citizen or a permanent resident alien. See Section 212(i) and Section 241(f). Thus, a parent who has an adult United States citizen child, may be forgiven for previous fault or misrepresentation under either Section 212(i) or Section 241(f). However, in the converse situation a twenty-two year old son, excludable or deportable on fraud grounds, would not be eligible for a waiver, because, being over 21, he is not a "child" of a United States citizen. This incongruity in the INA has an adverse impact on extended families and ought to be remedied immediately.

Prior to 1965, Section 211(c) gave the Attorney General discretion to admit to the United States an otherwise admissible alien who was technically inadmissible because of (i) a defective visa, (ii) being charged to the wrong quota, or (iii) an improper status, often due to no fault of the alien. When the Immigration Reform Act of 1965 was enacted, this provision was inadvertently omitted. This has led to the present anomaly where a nonimmigrant who has a defective visa may be granted a waiver under Section 212(d)(3), whereas no such waiver provision exists to admit an immigrant.

2. Right to Counsel

INA Section 242(b)(2) provides that an alien has a right to counsel in deportation hearings, but not at government expense. This law operates effectively to deny the right to counsel to indigents unable to secure a volunteer attorney. Although the regulations currently require INS authorities to advise aliens if free legal services are available, there are many areas of the country where such services are not available. Many legal aid offices have either decided not to handle deportation cases or are not equipped to do so. Also, a recently enacted amendment to the Legal Services Corporation Act, under which most legal aid offices receive funding, prohibits the representation of "illegal" aliens.

Only one court has given indigent aliens the right to appointed counsel, *Aguilera-Enriques v. INS*, 516 F.2d 565 (6th Cir. 1975), but only on a limited case-by-case basis.

The determination of deportability and the possibility of relief are complicated issues. Yet the present system presumes that an indigent alien unfamiliar with our laws is able to cut through the complexities alone. There is no justification for this presumption. It is impossible to accept. Adequate funding must be appropriated to provide legal representation to indigent aliens. Many so-called "deportable" aliens have a right to remain in the United States that can be determined only after in-depth research and analysis by counsel. If an actual defender's program cannot be established, legal services offices should, as an alternative, be encouraged to take on the responsibility of representation by earmarking additional funds for those purposes.

3. Section 241(f)

On its face, Section 241(f) is a fair and humane section which provides relief from deportation for an alien who committed fraud or misrepresentation to enter the United States and who now has a close relative here. That section provides a mandatory waiver of deportation based upon visa fraud at time of entry for those who are "otherwise admissible" and who are spouses, parents or children of U.S. citizens or lawful permanent residents. The issue of the proper interpretation of this section has reached the supreme Court, *Reid v. INS*, 420 U.S. 619 (1975) with no clear resolution, and the differing administrative and judicial interpretations have left the law in a state of confusion which makes it virtually impossible for the INS to administer Section 241(f) uniformly. An amendment is proposed in S. 1763 which gives discretion to the Attorney

General to give a waiver, clarifies the meaning of the term "otherwise admissible", and makes it clear that relief is available to those who have made innocent, as well as fradulent, misrepresentations.

We strongly urge its passage through Congress.

4. Exclusionary Rule for Illegally Obtained Evidence

Claims of unreasonable searches and seizures in violation of the Fourth Amendment are generally unsuccessful in deportation proceedings. The Supreme Court has been critical of warrantless searches and roving patrols by Border Patrol agents. *Almeida-Sanchez v. U.S.*, 413 U.S. 266 (1973); *U.S. v. Brignoni-Ponce*, 422 U.S. 873 (1975). However, impressed by the large estimates of undocumented workers, the Court has allowed routine vehicle stops at fixed checkpoints more than sixty miles from the border. *Martinez-Fuerte v. INS*, 428 U.S. 503 (1976). And although one federal district judge has held that the INS must have reasonable suspicion that a person is an illegal alien before it can engage in questioning, *Marques v. Kiley*, 436 F.Supp. 100 (S.D.N.Y. 1977), the INS does not accept that ruling outside of that district.

A troublesome issue arises, therefore, if a deportable alien is arrested, or if evidence of deportability is seized, in clear violation of the Fourth Amendment. Because deportation proceedings are considered civil rather than criminal in nature, courts have expressed hesitance in applying the exclusionary rule in deportation hearings. **See** e.g., *Cabral-Avila v. INS*, 589 F.2d 957 (9th Cir. 1978); c.f., *Wong Chong Chee v. INS*, 565 F.2d 166 (1st Cir. 1977). Very recently, the Board of Immigration Appeals struck a devastating blow to aliens whose Fourth Amendment rights have been violated by explicitly ruling that the exclusionary rule does not apply in deportation proceedings. *Matter of Sandoval*, Interim Decision No. 2725 (BIA 1979).

Thus, today an order of deportation can be sustained even though the alien has been illegally arrested and the evidence of deportation is tainted. This is true in spite of the fact that a criminal prosecution of the same alien for illegal entry would likely be tossed out of federal district court.

This result is not acceptable. the situation breeds further abusive behavior by immigration investigators and agents whose conduct has already resulted in several criminal indictments. Illegal tactics by INS officials are as repulsive as analogous police activities, the fruits of which have been traditionally excluded. The stakes at deportation hearings are as high if not higher than most criminal cases, and the policies underlying the exclusionary rule are equally applicable.

An exclusionary rule should therefore be enacted which would exclude all evidence from deportation proceedings where the evidence was obtained in violation of the alien's Fourth Amendment rights.

C. Review of Consular Decisions

At present, there is no right of review or appeal from adverse consular decisions on visa applications. An interested party may only request an advisory opinion from the State Department Visa Office.

The rationale for permitting only limited review of consular decisions has an historic basis which has since become outdated. At the time the Supreme Court held that Congress and the United States Government would be the absolute and final arbiter in immigration matters regarding persons applying for admission as immigrants to the United States without family ties and without financial or employment sponsors. Since that time there has been incorporated into the immigration laws a family relationship preference system which gives United States citizens and permanent residents a vital interest in the immigration of their parents, spouses, children and siblings. In view of this interest, it is a denial of due process if there is no legal channel for review and appeal from Consular decisions.

At the present time, under Section 104, an American Consul may arbitrarily, without specifying any reasons, refuse to issue a visa, even one as important as an immediate relative visa to the spouse or parent of an American citizen, and this decision cannot be reviewed even by the Secretary of State. The power of the American Consul effectively to deny basic rights of American citizens and aliens alike, without any possibility of review, is a frightening anachronism in the law which can no longer be tolerated. The courts in interpreting Section 104 have refused to intercede and decisions of American Consuls have been held judicially unreviewable even when the Consul violated the State Department's own regulations in refusing to disclose the reasons for the denial of a visa. *Buffafato v. U.S. Department of State*, 523 F. 2d 555 (2d Cir. 1975).

Many attorneys have complained of arbitrary and erroneous decisions made by Consular officers. Decisions sometimes have included unwarranted comments concerning the applicant's demeanor. There have been cases where a Consular officer has even commented on the applicant's failure to look him in the eye during interrogation, when such lowering of the eyes in some cultures can mean modesty or humility and should not be interpreted as being a sign of evasiveness.

We have previously recommended that visa issuance be a function of the INS—both for reasons of orderly administration of the immigration laws, and also to afford a channel for administrative and judicial appeal. If visa processing is to continue as a State Department responsibility we recommend that serious consideration be given to a system of review and appeal from Consular decisions especially in cases where the applicant is a beneficiary of a petition submitted by a relative who is a U.S. citizen or permanent resident.

CLOSING REMARKS

When the **U.S.-Asia Institute Task Force on Immigration and Refugee Policy** sat down to discuss the current immigration policies, we immediately recognized the difficulty of covering every issue. Therefore, we have tried to cover those major areas we felt were most important.

Much time, thought, and effort went into this Task Force paper. However, if we hope to see our recommendations implemented, we must do more than discuss and write. The Task Force, and all others concerned with the direction of immigration policies — regardless of their ethnic heritage — must be willing to take the time to make our views heard by the Select Commission, the Congress, the Administration, INS, and State Department officials. Only through uniting as a cohesive force behind the issues presented can we hope to achieve the type of immigration law we desire.

The United States is truly a great nation — made great by the diversity of its people. A fair and equitable immigration law will be an instrument of strength to make it even greater.

Norman Lau Kee

NORMAN LAU KEE
Task Force Chair

Asian/Pacific American
National Leadership
Conference, 1980
May 21-22, 1980
Washington, D.C.

"1980's: A Decade of Progress for Asian/Pacific Americans"

US-ASIA
US-Asia Institute

Dedication

TOM CHAN
Chairman of the Board

"There are those who give with joy.
And that joy is their reward.
Through the hands of such as these
God speaks, and from behind their eyes
He smiles upon the earth."

—Kahlil Gibran

We dedicate this Journal of the 1980 Asian/Pacific American National Leadership Conference to our friend, and Chairman of the Board of the U.S.-Asia Institute, Tom Chan, in appreciation and remembrance of him.

Tom Chan was many things to many people . . . a husband, a father, a friend, a business associate. . . . He was a man of dedication, sincerity, warm human compassion, and of vision.

One of his visions was the U.S.-ASIA INSTITUTE. As a founding Board member and Chairman of the Board of the U.S.-Asia Institute, Tom Chan dedicated his time, efforts, and financial support to the building of an organization which would work to promote mutual cooperation and understanding between the countries of Asia and the United States.

Tom took pride in everything he did. . . . He took pride in his family and in his work. Moreover, he took pride in the U.S.-Asia Institute. It was in memory of this sense of pride that his widow, Nancy Chan Tom, established the TOM CHAN MEMORIAL FUND within the U.S.-Asia Institute as a perpetual fund in the memory of Tom Chan. This fund, made available through the contributions of Tom Chan's many friends, will be used to immortalize Tom Chan's memory in the area of small business.

"He Lived. . . .
and he brought to this world
a sense of dedication, truth, and commitment. . . .

His memory will live on
in the U.S.-Asia Institute."

Co-Founders Message

"1980's: A Decade of Progress for Asian/Pacific Americans."

JOJI KONOSHIMA
Co-Founder

"The older generation has paved the way for us — the suffering, discrimination and hardships they have gone through cannot be measured. We, too, can be pioneers, and make a better world for our children and all of those less fortunate than you and I."

ESTHER G. KEE
Co-Founder

Dear Friends,

The First Asian/Pacific American National Leadership Conference is now history. This Conference, conceived by the U.S.-Asia Institute Co-Founders many months ago, marks the first time Asian/Pacific Americans as a group have come together in a national forum to discuss issues of interest and concern to their community. From these discussions, Asian/Pacific American position papers were developed.

This Journal focuses on the National Leadership Conference, its participants, and its interactions. Most importantly, contained herein are Asian/Pacific American position papers. These positions are representative of the concerns voiced at the National Leadership Conference, and, in turn, reflect the concerns of the broader community.

We hope you'll take time to review the Journal and to consider the views of the Asian/Pacific American constituency represented. We welcome any comments you might have, and look forward to your support as we move ahead into the **"1980's: A Decade of Progress for Asian/Pacific Americans."** Thank you!

Very truly yours,

Joji Konoshima

Joji Konoshima
Executive Director

Esther G. Kee

Esther G. Kee
Associate Executive Director

1980 Leadership Conference & U.S.-Asia Institute

THE CONFERENCE

The **Asian/Pacific American National Leadership Conference,** held in Washington, D.C. May 21-22, 1980, marks the first time Asian/Pacific Americans have come together in a national forum to discuss issues of interest and concern to their community. The Conference, conceived by U.S.-Asia Institute Co-Founders—Joji Konoshima and Esther G. Kee—many months ago, went through many "growing pains" as the Conference Committee structured and restructured the format, scheduling and other aspects of the Conference.

After many hours of deliberation and discussion, a unique format was created by the Committee. Unlike most other Conferences, this was one in which members of the Asian/Pacific community addressed government resource people, followed by responses from the government people. This interaction ensured that government respondents "listened" to the needs and concerns expressed by the Asian/Pacific community.

From the Workshop discussions at the Conference, Asian/Pacific American position papers were developed. These positions are representative of the concerns of the broader community.

This Journal of the National Leadership Conference focuses on the Conference, its participants, and its interactions, as well as the positions taken by those in attendance.

CONFERENCE COMMITTEE

PRISCILLA CHING CHUNG, Ph.D., Conference Chair, is a visiting colleague with the Department of History at the University of Hawaii at Manoa. She was a member of the President's Commission on Foreign Languages and International Studies.

JOJI KONOSHIMA is the Executive Director of the U.S.-Asia Institute. He is also Director of Asian/Pacific American Affairs for the Democratic National Committee, and is currently engaged in a wide variety of political and public service activities.

ESTHER G. KEE is the Associate Executive Director of the U.S.-Asia Institute, and the National Coordinator of the Asian/Pacific American Affairs Unit of the Democratic National Committee. She is active in numerous political and community service organizations.

DERRICK TAKEUCHI is the former Administrative Director of the U.S.-Asia Institute. He is a graduate of Georgetown Law School in Washington, D.C.

JOANNA REIKO CALLNER is the former Special Projects Assistant at the U.S.-Asia Institute. She is a recent graduate in English literature from Oberlin College. She has a keen interest in Asian/Pacific American affairs, and plans to do graduate study in a related field.

THE U.S.-ASIA INSTITUTE

The **U.S.-Asia Institute's** sponsorship of the Asian/Pacific American National Leadership Conference was a natural progression for the Institute in its ongoing efforts to involve Asian/Pacific Americans in this country's social, cultural and economic fabric.

The Institute, a Washington, D.C.-based nonprofit membership organization, was founded in 1978 with the primary mission of developing mutual cultural and economic enrichment, cooperation and understanding between people from Asia and America. In working toward this goal, the Institute has focused on the role and concerns of Asian/Pacific Americans in the United States. The Asian/Pacific American National Leadership Conference presented a unique forum for the discussion of this role as well as issues of interest and concern to the Asian/Pacific community.

Sponsorship of discussion forums such as the National Leadership Conference is not new to the U.S.-Asia Institute. Over the past year and a half, the Institute has coordinated and cooperated on numerous briefings and discussions to increase public awareness of the problems and prospects for U.S.-Asia relations.

Working through its **National Advisory Council to the East Asian and Pacific Affairs** Bureau in the U.S. Department of State, the Institute has given Asian/Pacific Americans the opportunity to interact with State Department officials on East Asian and Pacific issues. Specific briefing topics have included: U.S.-Japan relations; the post-Park Chung Hee situation in Korea; the Philippines; the Indo-China military situation; and the Indo-China refugee problem. Asian/Pacific Americans were also able to participate in special regional foreign policy briefings conducted by the U.S. Department of State in cooperation with the U.S.-Asia Institute.

In the area of foreign investment, the Institute has co-sponsored, with the **Overseas Private Investment Corporation,** a series of regional seminars on investment in the developing world. These seminars focused on growth through foreign investment, detailing OPIC programs available for new ventures or the expansion of existing projects which contribute to host country development and help to strengthen the U.S. economy as well.

In addition to sponsoring face-to-face meetings of many types, the U.S.-Asia Institute conducts research on important policy matters affecting U.S.-Asia relations. Research findings and recommendations are published in periodic reports for use by the public, business and academic communities, news media, government officials and other interested parties.

The Institute also acts as a clearinghouse for information on Asian and American cultures, on education, employment, immigration, and other topics. A large part of the public information available from the Institute focuses on the process, impact and trends in U.S.-Asian economic relations and its impact on domestic U.S. issues. The Institute emphasizes the great need for the American and Asian publics to understand the interaction of international policies and domestic programs—in fields such as education, health, welfare, social security, taxation, and regional or community economic development. Further, the Institute continues to promote a progressive U.S. foreign policy toward Asia and similar policies by Asian nations toward the U.S.

1980 Leadership Conference & U.S.-Asia Institute

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THE DEVELOPMENT OF ASIAN/PACIFIC POSITION PAPERS

On May 21-22, 1980, six hundred Asian/Pacific Americans from across the nation assembled at a national conference in Washington, D.C. to identify issues and develop positions representative of the Asian/Pacific community. The **First Annual Asian/Pacific American National Leadership Conference** addressed many issues of concern and interest, including: Foreign Policy, Immigration, Political Leadership and Organization, Social Services, Health, Housing, International Trade, Trade Missions, Education, Science, Small Business, and Community Economic Development.

From this Conference came the position papers contained in this Journal. These positions are the end result of a process that began at the regional level of the Asian/Pacific American Democratic Caucus and was drawn together at the May conference.

In the following pages of this Journal, you are presented with the results of a concerted effort to gain recognition of the Asian/Pacific community as an integral part of the American fabric, and to develop a sensitivity to our community's needs. Without further introduction, what follows are the position papers of Asian/Pacific Americans presented as an **agenda for the 1980's.**

Asian/Pacific Position Papers

FOREIGN POLICY

The majority of Americans come from a European heritage and it has been natural for the nation to turn toward the Atlantic. This Eurocentric focus has permeated our foreign policy. Americans know little about Asia and the Pacific because of the western cultural orientation of the education system. The importance of Asia and the Pacific can no longer be ignored. Over half of the world's population resides in the Asian/ Pacific region. Manufactures' exports from developing countries, notably Asian, have skyrocketed. Japan has become the world's third strongest industrial giant while many Southeast Asian nations compete hard for developed country markets in low technology manufactures.

If ever it was acceptable, Eurocentrism in American foreign policy now is certainly most inappropriate. And, just as European Americans fit especially well as participants in cross-Atlantic relations, Asian/Pacific Americans are ideal U.S. envoys to Asia. Soaked through with Asian culture, language, social mores and codes of conduct, yet even more knowledgeable of the American lifestyle, Asian/Pacific Americans can distill the maximal possible mixture of American and Asian objectives in relations between these two great regions of the world.

The creation, in 1978, of the National Advisory Council for East Asian and Pacific Affairs which facilitates communications between Asian/Pacific American communities and the Department of State was a step in the right direction. But it was only one step. Further steps, designed to increase Asian/Pacific American participation in the American foreign policy process, are essential to insure strong amicable ties with the Asian region.

Asian/Pacific American participation will not only ease contacts with Asia's national governments, but will also permit improved coordination with regional organizations like the Association of Southeast Asian Nations, ASEAN. Encouraging strong U.S.-Asia ties, promoting Asia's economic strength and stability, Asian/Pacific Americans can help this region of the world to continue expanding its economic strength. Surely this will increase Asia's exports to the U.S., but more importantly, it will promote an expanding, ever wealthier, Asian market, hungry for U.S. exports. Linked by extensive trade flows to the United States, Asian governments will find it in their interest to build a framework of security ties compatible with U.S. security.

With this in mind, we recommend:

- Federal Government agencies involved in the foreign policy process, especially the U.S. Department of State, must make a concerted effort to recruit Asian/Pacific Americans for policy positions at all levels—not only in the interest of fairness and equal opportunity but, to insure the development of the most effective U.S. foreign policy possible.
- By cooperating with national governments and regional organizations like ASEAN, the U.S. must work to insure a politically and economically strong Asia, securely united in the struggle to insure economic prosperity and freedom for all Asian peoples.
- The United States should uphold humanitarianism and human rights activities. Concern for the plight of millions of people in Asia should be our first priority.
- The following recommendations are made with respect to specific nations/issues:

China: The process of normalization of relations with the People's Republic of China should continue, and additional attempts should be made to bring it closer into the web of economic ties linking together the nations of south and east Asia. Further, the United States should continue to support the modernization efforts by the Chinese government. While we support the continuation of cultural, educational, social and trade relations with Taiwan, we feel the Chinese should be allowed to settle their reunification problems internally.

Japan: The United States should work closely with Japan, the third largest industrial power in the world, to develop assistance programs that will support stability in the Asian/Pacific region. This is especially important in the areas of foreign aid, trade investments, technical assistance, refugee resettlement, as well as the further opening of the Japanese market for American products.

Korea: The United States should work with Asian/Pacific nations to seek new avenues for resolving the question of Korean unification. The Pacific community must find ways to support the democratic aspirations of the Korean people.

Indochina: We are most concerned about the explosive situation in Indochina and urge that diplomatic channels be found to seek a peaceful resolution as soon as possible. It is most important that we seek regional cooperation to insure that the peoples of Indochina will be able to work and live in peace and prosperity.

ASEAN: The United States should support cooperative ventures through concrete investments. We should further encourage nations such as the People's Republic of China, Japan, Australia and New Zealand to strengthen their ties with ASEAN. Economic and social developments in the Asian/Pacific region will promote stability. Special attention should be paid to the less developed members of ASEAN, nations such as Indonesia.

Philippines: The United States should work with the Pacific community of nations to seek ways of facilitating the economic well being of the Philippine people.

Asian/Pacific Position Papers

IMMIGRATION

Beginning with the infamous Chinese exclusion laws, United States immigration statutes have consistently repressed Asian and Pacific immigration to this country. The discriminatory policies underlying the Asia-Pacific triangle exclusion and the Gentlemen's Agreement with Japan continued to manifest themselves in the National Origin Quota laws which further codified preclusion of Asian immigration. Not until 1965 were the final vestiges of blatant anti-Asian provisions removed from the immigration laws. However, by that time other political and social restraints were in place which served as bars to a free flow of immigration from Asian and Pacific countries.

Today, the effects of the past racist policies, coupled with certain institutionalized barriers, continue to plague Asian and Pacific American communities as reunification with family members and friends is sought. Although immigration accounts for only 0.2 percent of a total U.S. population which is approaching zero population growth and is in fact decreasing, numerical limitations on certain preference categories effectively thwart or unreasonably delay reunification for most families. Unusual documentary requirements, particularly for Chinese, serve as additional obstacles to immigration, and the English literacy requirement for naturalization effectively blocks elderly Asian immigrants from enjoying citizenship rights. Valiant Filipino war veterans who, in many cases, fought side by side with Americans in World War II continue to be denied naturalization benefits, and Korean citizens who were employed by the U.S. Army in South Vietnam have been foreclosed from permanent residence.

Nonimmigrants from Asian countries also face serious inequities under present immigration laws. Examples of abuse and inconsistencies are plentiful in the area of change of status or extension of visas. Temporary workers and intra-company transferees must make their way through a statutory maze.

The past and present inequities in the immigration system against Asians and other must not continue. In order to begin to address and to alleviate these inequities, we advocate the following specific changes.

Increase in Total Numbers and Restructuring of System Preference

- Present visa backlogs in Asian countries which have resulted from past discriminatory laws and political restraints on travel must immediately be cleared up. The colonial sub-quota limitation of 600 visas must be significantly expanded. The present immigration quota and preference system must be restructured in order to provide for the reunification of nuclear family members, without delay. A higher priority should be given to extended family members.
- We propose that total immigration for **all categories,** but excluding emergency refugees, be expanded to approximately 750,000 annually. This number shall include those who presently are not subject to quota. The present national origin limitation of 20,000 per country, should be expanded to 40,000, except for Canada and Mexico which should receive additional numbers.

  Three categories should be created:
  1. **Non-emergency Refugees** - The recently passed Refugee Act should be maintained with a normal flow of 50,000 annually.
  2. **Family**
     a. Immediate Relative (IR) - Not subject to quota limitation. U.S. citizens petitioning for spouse, unmarried children regardless of age, parents, grandparents, unmarried siblings who are accompanying a parent entering under this preference. Also a permanent resident petitioning for spouse and unmarried children regardless of age.

     A limit of 350,000 should be initially set for the three preference groups listed below with the provision that unused numbers will flow down to the third category. There should be no percentage allocations for each preference group in order to give priority to the highest preference applicant.

     b. First Preference - U.S. citizens petitioning for married children and their accompanying immediate spouse and unmarried minor children.

     c. Second Preference - U.S. citizens petitioning for brothers and sisters with their accompanying spouses and unmarried minor children. Also permanent residents petitioning for parents.

     d. Third Preference - Permanent residents petitioning for unmarried brothers and sisters.

3. **Third Category** or **Independents** should be divided into two sections. Numbers allocated for this category shall be 150,000 plus any unused portion of the family category.
   a. The first section shall permit 250 persons from each country in the world to enter the U.S. on the basis of motivation, without regard to preference, wealth, or skills. The purpose of this section is to maintain the U.S. tradition of being a land of opportunity for those who are less fortunate. Provision should be made for supportive services similar to those available to refugees. We estimate this group will number around 40,000 annually.
   b. The balance of the Third Category should be based on a point system with weighted points given for the following: education, skills and experience (especially if there is a shortage of such skills in the U.S.), entrepreneurial experience, managerial experience. We estimate this group will number around 110,000 annually.

Other Recommendations

- Filipino war veterans who served with the U.S. armed forces must be provided with the right to apply for full citizenship benefits. Alternative means of satisfying the English literacy requirements for naturalization should be recognized. Consistent standards for nonimmigrant categories and visas must be established with reasonableness. Important policy issues relating to refugee amnesty, must be given close consideration. Greater sensitivity towards cultural and social values of immigrant groups should be an established goal for all Immigration and Naturalization Service employees.
- Certain provisions in the present laws which are extremely inequitable and unfair must be corrected. The "reentry doctrine" which permits the exclusion of lawful permanent residents who have proceeded abroad even temporarily should be eliminated. The fact that decisions of consular officials cannot be reviewed is repugnant to principles of fairness and breeds abuse. In the deportation area, the right to counsel and the application of the evidentiary exclusionary rule where the Fourth Amendment has been violated must be viewed as fundamental. A statute of limitations should be legislated and additional humanitarian remedies must be expanded.
- Administratively, the INS needs to be made more efficient on the service end. The naturalization process needs streamlining, and the replacement procedure for lost or stolen alien cards should be revamped. The labor certification procedure is unworkable and lacks rationality, while the absence of a waiver provision for Section 245(c) which prohibits adjustment of status if a person has worked without authorization operates harshly in many cases.

A fair and humane body of immigration laws which is applied evenly, fairly, and compassionately is a goal within our reach. Every effort must be made to reach that goal lest we be doomed to repeat the sad and pitiful history of the painfully discriminatory immigration laws of the past.

Asian/Pacific Position Papers

INTERNATIONAL TRADE

The United States economy remains the largest in the world. But, America's economic dominance is waning, its international position shifting. In 1974, America's Asian trade surpassed its trade with Europe. Asian businessmen give no sign of letting their leading position slip away.

For the U.S., the new relationship is not without its problems. The American share of the Asian market is dwindling while Asia's exports to the U.S. grow faster than Asia's imports from the U.S.

How can American businessmen sell more to the Asians? The answer is quite simple. American business must not only supply superior goods at competitive prices, but they must learn more about Asians and their land to insure production appropriate for Asian circumstances; marketing appealing to Asian sensibilities; sales compatible with Asian national regulations. Essentially, American businessmen must learn Asian languages, cultures, and national regulations.

Intimately knowledgeable about both American and Asian systems, Asian/Pacific Americans with bicultural and bilingual skills can be effective and useful in American trade with Asia.

Europe has no sizable Asian ethnic bloc. The competitive advantage is America's to exploit. While the benefits of Asian/Pacific American participation in America's Asia trade appear obvious, there has been no organized effort to recruit this immensely useful group by either government or business. Most Asian/Pacific American businessmen are involved in small businesses. Certainly this is a deterrent to their participation in international trade, but just as certainly, this does not preclude their participation in international trade. If the government is unwilling to help coordinate small businesses to permit operation on a scale enabling successful competition with the large firms dominating America's international trade, then it must stand ready to actively promote Asian/Pacific American participation in big business and insure adequate representation in government-sponsored trade delegations.

We refuse to accept explanations that excuse the failure of government agencies to bring Asian/Pacific Americans into high level positions by suggesting that the initiative for participation must come from Asian/Pacific Americans. Many more Asian/Pacific Americans are willing to come into government, but they are not going to accept positions far below the level for which they are qualified. We are not asking that Asian/Pacific Americans be given positions for the asking, but rather that they be given full consideration for positions for which they are qualified.

Asian/Pacific American participation can help promote the sales of American products in Asian countries, and permit the building of stronger economic ties, based upon a clearer understanding of each other's positions, between these two great regions of the world.

The following recommendations will help strengthen economic ties between Asia and America:

- The Federal Government should establish an Asian and Pacific American International Trade Advisory Group to coordinate policy and interact on a permanent basis with the Department of Commerce, the Overseas Private Investment Corporation, the United States Trade Representatives Office, the Department of State, the Agency for International Development, other pertinent agencies, and Congress. This will permit full use of the special insights Asian/Pacific Americans can bring to America's international trade posture.
- To insure appropriate and successful foreign economic policy, the U.S. Government should recruit and include Asian/Pacific Americans in high level policymaking positions.
- Because at the present time most Asian/Pacific American businessmen are engaged in small businesses, careful consideration must be given to the possibility of coordinating small businesses on a scale permitting successful competition in the international arena.
- Regulations making it especially difficult for small businesses to engage in international operations must be reexamined. The exclusion on foreign-earned income, once intended to encourage American exports, now makes it so costly for firms to post employees overseas that most companies cannot afford to retain Americans in foreign posts.

U.S. TRADE MISSION

The United States economy is still the largest economy in the world but it no longer is the dominant force in the world that it was even ten years ago. In 1969, the U.S. share of world exports was 25 percent but, in 1979, it declined to 14 percent. The challenge for the 1980s is to recapture a larger share of the market.

U.S. exports to Asian/Pacific countries now are equal to those to Europe. As economic conditions improve, the growth potential of U.S. export trade to the Asian-Pacific countries could well develop that part of the world into the largest single export market for the United States. This will require all the intelligence, diligence, and skill of Americans, since the 1980s will be a decade of intense trade competition.

To meet this challenge, our country should call upon the more than four million Asian/Pacific Americans in our country to assist in this task.

The United States has used trade missions to promote sales of our products and services. The travel industry in Hawaii, over the past ten years, has sent numerous trade missions to Japan and, in 1979, the number of Japanese visitors to Hawaii increased by 23 percent to almost 600,000. These Japanese visitors contributed more than 400 million dollars to the Hawaii economy last year.

Asian/Pacific Americans can play a far greater role in the United States in fostering, promoting and developing export trade to the Asian/Pacific countries. Asian/Pacific Americans, with bilingual and bicultural capabilities and ethnic sensitivity, have the obvious qualities to bridge the language and cultural gaps which impede better intercultural understanding and that oftentimes obstruct our export efforts.

A major deterrent to more active participation by Asian/Pacific Americans in U.S.-sponsored trade missions is the fact that a great majority of the Asian/Pacific Americans are engaged in small business activities. By the nature of representation or membership in trade missions, the small businessman is precluded from active participation.

A major ingredient of an expanding export trade to Asian/Pacific countries is a good relationship on a people-to-people basis. Generally, countries are anxious to receive trade missions. They provide a good introduction for goods and services for both countries and also provide for the development of personal contacts. Participation by Asian/Pacific Americans in trade missions and international trade will make good use of one of our country's most valuable assets.

To enhance the development of increased export trade to the Asian/Pacific countries, it is recommended that we:

- Develop an outreach program to bring the Asian/Pacific Americans into active participation in trade missions.
- Encourage the study of Asian language.
- Encourage the development of inter-cultural understanding.

Asian/Pacific Position Papers

SMALL BUSINESS

For businessmen faced with discrimination, inadequate training in the necessary language and technical skills, and insufficient resources, a small business is often the only business they can ever hope to be a part of. Largely because of these reasons, most Asian/Pacific American businessmen are small-scale enterpreneurs.

The popular misconception is that Asian/Pacific American businessmen, whether on a large or small scale, are inordinately successful. Would that this were true. A 1980 Small Business Administration report indicates that Asian/Pacific American small businessmen have very low gross incomes. Unable to get the necessary assistance from the private sector, Asian/Pacific American businessmen need government help to set them on a successful path. We are not asking for handouts, but for training programs, financial assistance, and equal opportunity to permit hardworking Asian/Pacific American businessmen—of whom there are many—to make their ideas a reality; to allow them to reach beyond the ordinary if their desire, their ideas, and their hard work are worthy of success.

The Federal Government has developed several programs especially aimed at assisting minority-run small businesses. Regrettably, the implementation of these programs often rests on a plane far below the one on which they were conceived and drawn up. Only a skimpy measure of assistance from these programs has filtered through to Asian/Pacific businessmen.

Assistance under the 8A program is provided to some small businesses, organized for profit and meeting the requirements set out in Part 121 of the SBA Rules and Regulations. The businesses must be owned (at least 51 percent), controlled, and operated by socially and economically disadvantaged U.S. citizens. Although certain ethnic groups, including Asian/Pacific Americans are considered part of the disadvantaged bloc, just belonging to one of the specified groups does not insure 8A eligibility. Each case is examined for its own merits. Social and economic disadvantage that has impaired the ability to compete in the free enterprise system must be proved.

Serving the same group that 8A assistance reaches are the Minority Enterprise Small Business Investment Companies (MESBIC). Privately owned and managed, clustered within states, and licensed for national operations, MESBICs are formed to lend funds, guarantee third party loans, and offer general management and technical assistance to small businesses.

For Asian/Pacific Americans, and for all minorities generally, neither the MESBIC nor the Minority Business Development Agency (MBDA) programs are as efficient as they might be. The rules governing eligibility seem reasonable, but major difficulties appear in disbursing the full allotment of funds assigned to each program. Financed by public and private funds, the 67 MESBICs in June 1974 had total funding of $52 million, of which $23 million came from the SBA. Amazingly, only $17 million or 33 percent of the available funds had been invested in disadvantaged small businesses. Several minority-run small businesses would be only too glad to get more, or to get any, MESBIC assistance. Asian/Pacific American-run small businesses received only 4 percent of the MBDA-approved financial packages and 5 percent of its approved procurements in 1978. If the funds are just going to sit there, why not increase assistance to deprived Asian/Pacific American small businesses?

Several improvements can be incorporated into government policy aimed at helping small businessmen. We offer some suggestions below:

- A greater attempt must be made by both the Asian/Pacific American business community and the Federal Government to insure that Asian/Pacific Americans receive their full due from Federal programs aimed at assisting minority-run small businesses, and that Federal programs, at least until minority-run small businesses no longer need government assistance, disburse the full amount of funds available for use.
- Government agencies and programs should be cognizant of the fact that a large proportion of the Asian/Pacific American community consists of newly arrived refugees, many of whom hail from entrepreneurial backgrounds, but who need special intercultural and linguistic training to permit successful operation in an American environment to which they are not accustomed.

- Often government programs do not reflect Asian/Pacific American concerns and needs because the government has failed to bring Asian/Pacific Americans into high policy-making positions. Efforts must be made to rectify this problem, and an Asian/Pacific American Advisory Council should be set up to work in conjunction with relevant government agencies to insure a fair hearing for Asian/Pacific concerns. The Council will give qualified Asian/ Pacific Americans access to the proper channels, permitting them to link the Asian/Pacific American community with mainstream American economic and political life, and providing benefits for the whole American nation.

Asian/Pacific Position Papers

COMMUNITY ECONOMIC DEVELOPMENT

Waves of new Asian/Pacific immigrants to the U.S. tend to set up residence in ethnically-segregated communities. Comfortable with people coming from similar cultural/linguistic backgrounds, Asian/Pacific Americans often hesitate to leave the security of their little islands of "Asia in America" to work and live in other areas which to them appear strangely alien. Too insecure to search for employment outside of their community, yet often not finding any opportunity within their community, new Asian/Pacific immigrants many times find themselves stuck at the bottom of the socio-economic scale.

Development for this group—willing to work yet uncomfortable in the American environment—must begin within the Asian/Pacific American communities in which they reside. Those Asian/Pacific Americans with the courage and the perseverant dedication to initiate programs aimed at community development should be encouraged by making available to them special programs under whose auspices they can organize and plug into available resources. Ideally, a structured organization with the capacity to train personnel, organize, and procure funds should be created.

The Economic Development Administration with the Department of Commerce, and the Community Services Administration have developed programs aimed at community development. However, Asian/Pacific Americans are a neglected group in the receipt of government development assistance monies. Only one Asian community development corporation funded by the CSA exists in the United States—the Chinese Economic Development Council in Boston. With this in mind, the following recommendations are made:

- A national council on Community Economic Development for the Asian/Pacific American community should be established to educate the community on the benefits of, and process to procure, community development funding; to serve as advocates for the community in obtaining community economic development funds; and to assist in the implementation of community development programs once funding is obtained.
- Asian/Pacific Americans should be included as a disadvantaged minority in the area of community economic development with special consideration given applications of this group funding. In addition, community development agencies under the federal government must establish an outreach informational program to educate minorities on monies that are available.
- To better serve the Asian/Pacific community and other ethnic communities, Asian/Pacific Americans should be placed in policy-making positions in community economic development agencies, particularly in the Community Services Administration, the Department of Commerce, USDA, and Housing and Urban Development.

POLITICAL ORGANIZATION AND LEADERSHIP

The United States is a mosaic of many cultures and ethnic groups. Four million Asian/Pacific Americans, an integral part of this mosaic, live in this country, and contribute socially, culturally, economically, and in many other ways to the fabric of American society. Yet, over the years, the concerns of Asian/Pacific Americans have largely been ignored by those in power due to the lack of a strong, unified voice from the Asian/Pacific community.

Practically speaking, the geographic dispersion of the Asian/Pacific community makes it impossible for an Asian/Pacific American to be elected to Congress outside of Guam, Hawaii and California except with the support of non-Asian voters. Likewise, appointments in the Executive and Judicial Branches of the Federal Government are dependent upon political visibility. For Asian/Pacific Americans to have their interests and concerns heard, they must develop political visibility and viability. This can only be done through political organization and leadership.

Progress is being made. In the past four years, more Asian/Pacific Americans have been appointed to Presidential Commissions and Advisory Councils, Administration and agency committees and posts, and Federal judgeships than in all previous Administrations. This is a step in the right direction; however, there is still a long way to go. To adequately address the needs and concerns of Asian/Pacific Americans, the following actions are urged:

- Political power is never given away. It can only come with commitment and effort. The Asian/Pacific American community must recognize this, organize, and become involved in the political process.
- As part of its organizational efforts, the Asian/Pacific community must strive to overcome cultural restraints, and educate the people on the politics of the American governmental system. Understanding is the basis of commitment and effort.
- If Asian/Pacific peoples hope to obtain political power through elective office, they must rely on non-Asian voters. Thus, Asian/Pacific Americans must work to eliminate and overcome negative media and other stereotypes—building a positive image of Asian/Pacific Americans as effective leaders, sensitive to the needs and concerns of everyone. Likewise, the Asian/Pacific community must work *with* other groups for the betterment of all.
- While significant steps have been made in appointing Asian/Pacific Americans to positions in the Executive Branch, qualified members of our community should be recruited for *all* levels of appointment—including Cabinet and sub-Cabinet positions, as Assistants to the President, and for all levels of policymaking positions in the departments and agencies on both the national and regional levels.
- Executive departments and federal agencies should appoint Asian/Pacific Americans to advisory groups to review existing policies and practices that may be barriers to the needs of Asian/Pacific Americans, and to look after Asian/Pacific concerns in the making of new policies.
- Asian/Pacific Americans should be appointed to Judicial positions. To achieve this, Asian/Pacific Americans must utilize existing avenues for input into judicial appointments.

Asian/Pacific Position Papers

SOCIAL SERVICES

Our social services should meet the social, physical, and emotional needs of Asian/Pacific Americans as well as others. Many first generation Asian/Pacific Americans with language and cultural barriers are not able to utilize present resources because they cannot communicate with the dispensers of services, and they fear insensitive treatment at the hands of outsiders. Service providers should be aware of and responsive to these needs. Social service institutions located in urban areas with such Asian/Pacific American populations must train or employ bilingual personnel to insure effective service provision for Asian/Pacific Americans.

The availability and accessibility of social services for Asian/Pacific Americans should be enhanced as we can no longer take care of our own. As the Asian/Pacific populations grow, ethnic bilingual community organizations that have been trying to fill the void are finding their resources strained. For a system available, accessible, and acceptable to Asian/Pacific American communities, the following steps must be taken:

- Data collection and interpretation should be improved so that the needs of our people are identified and ways of serving them can be developed.
- Funding should be made available to Asian/Pacific community organizations to conduct need studies. These organizations have the language expertise, cultural knowledge, and community trust necessary for proper data collection and interpretation.
- Asian/Pacific American input into the planning, development and implementation of social services at all levels must be actively sought.
- Social service providers must be sensitive to the cultural and language differences of Asian/Pacific American populations. Efforts must be made to recruit, train, and employ multi-lingual and multi-cultural personnel at all levels.
- Funding should be allocated for the planning, development and implementation of policies to meet the needs of the Asian/Pacific community, especially the needs of refugees. The Federal Government further should seek refugee input for such programs as orientation, health, housing, language and vocational training.

HEALTH

Language and cultural barriers deny Asian/Pacific Americans equal access to the nation's health care programs. Ethnic bilingual community organizations have sprung up in Asian/Pacific American communities in an attempt to improve our health services. Limited resources, however, have hindered their effectiveness. More effort must be made by governmental and non-governmental health care planners and providers to meet the health needs of Asian/Pacific Americans.

To insure equality of health care to the Asian/Pacific community, the following measures should be implemented:

- Asian and Pacific Americans should be included in all levels of health and mental health care planning that will have an impact on their communities. This includes staff positions at all levels of the federal and regional health and human services agencies. Policies should be enacted and implemented with the needs of Asian/Pacific Americans in mind.
- Funding and technical assistance should be made available to Asian/Pacific American community organizations to collect data for proper input into health care planning.
- Since almost half of the Asian/Pacific American population is composed of immigrants and refugees, many with language and cultural difficulties, our communities need integrated comprehensive multi-service health care centers staffed by bilingual and bicultural workers. There should be an increased commitment and financial support for Asian/Pacific American community-based services.

HOUSING

Housing is a central concern of Asian/Pacific Americans. Acute problems exist—especially among new refugees and in deteriorating inner city communities where housing is lacking, or at most, inadequate. Newly-arrived refugees suffer double hardship in their relocation efforts. Not only is housing not available, but information and acculturation services are often lacking, making relocation efforts in an alien country even more frightening and difficult. Among the elderly, many continue to live in inadequate housing for the sense of security they get by living among their own.

To address the needs of Asian/Pacific populations, the following must be done:

- Communication should be maintained with Asian/Pacific American communities to ascertain the needs of the Asian/Pacific people. Continual outreach by the Department of Housing and Urban Development and other housing-related agencies is essential for proper Asian/Pacific American input into housing programs, and to ensure the inclusion of Asian/Pacific Americans in housing programs.
- Asian/Pacific Americans should be recruited for employment in policy-making positions on both the regional and national levels. They should also be recruited for positions in research, development of contracts and all phases of subsidized housing projects. Further, Asian/Pacific Americans should be properly represented in occupancy, work force, and contracts in all subsidized projects.
- HUD should promote and assist Asian/Pacific American nonprofit community organizations in financing the technical capacity to take a more active role in housing development.
- Additional funding of information and acculturation service centers is needed to give Asian/Pacific Americans the confidence and the ability to function successfully in mainstream American life.
- Housing needs of refugees are particularly acute at this time. The Department of Housing and Urban Development should solicit Indochinese community input regarding their housing needs. We urge the President to develop a special housing program for Southeast Asian refugees and small Asian/Pacific American communities with the full participation of Southeast refugee organizations and smaller Asian/Pacific communities in the development and implementation of this special housing program.

Asian/Pacific Position Papers

EDUCATION

Federal programs in almost every area of education, ranging from early childhood education to adult education, are still culturally insensitive, often in subtle ways, to the special problems and needs of Asian/Pacific Americans, thereby denying them equal educational opportunity. While many of these programs claim to promote multiculturalism, they often include only the most superficial aspects of cultural diversity and many ultimately do more harm than good.

Due to the enormous influx during the past decade of Asian/Pacific immigrants, who may now constitute as much as 50 percent of the total Asian/Pacific American population, there is a tremendous need for additional federal funding of bilingual/bicultural education programs for Asian/Pacific Americans. Such programs are currently grossly underfinanced in comparison to those for other non-English speaking groups.

Many Asian/Pacific American adults, especially recent immigrants, unemployed young adults, and wives of U.S. servicemen, are urgently in need of gaining competency in English and learning a useful vocation. Without help, many of them are wasting their potential, trapped in low-paying, menial jobs; while others, especially young adults, are unemployed and subject to temptations to join street gangs to pursue a life of crime.

Due to the Anglo-centric environment of most colleges and universities, Asian/Pacifics face many problems in higher education. Asian/Pacific students are not having their social, psychological and academic needs met due to the lack of Asian/Pacific studies programs and unavailability of cross-cultural counseling. Asian/Pacific American students from low-income families are not receiving their proportionate share of financial aid; and even those from middle-income families are having great difficulty financing their education because of Federal guidelines on financial aid that do not consider the special circumstances faced by many of these families. Moreover, Asian/Pacific American academicians in higher education, including those who are American-born, are finding it particularly difficult to gain access to faculty positions in fields such as humanities and social sciences; and those who have gained access face subtle forms of discrimination in such areas as promotion and salary.

A number of the problems described above are exacerbated for the 400,000 Indochinese refugees who have entered the country since 1975. About 40 percent of these refugees are school-age children who are often two grade levels behind due to the interruption of their education by the war. Moreover, due to the hardships and trauma they have undergone, many of the refugees suffer from health problems and severe psychological stress. Unfortunately, despite the efforts of the Federal government to meet their needs, many Federal programs to assist the refugees are not very effective owing to the lack of coordination among government officials and the lack of consideration given to the cultural and linguistic differences among the various Indochinese groups.

Finally, Asian/Pacific Americans are greatly underrepresented in all sectors of the Federal Government, particularly at the GS-15 and higher grades—decision-making levels—as well as on the various policy-making advisory bodies.

The following positions on policy and programs in different areas of education grow out of our concerns:

Overall

- The Department of Education must insure Asian/Pacific American input into policymaking through both the employment of our people in decision-making level positions (GS-15 and up) as well as on the various advisory bodies and review committees.
- Programs should be reviewed to determine whether they can be more sensitive to the special needs of Asian/Pacific Americans and whether they can promote multiculturalism in more substantive and meaningful ways.

Lower Education

- More coherent and sound multicultural education programs must be developed, funded, and implemented. Asian/Pacific American cultural heritages and history should be included in the curriculum. Funding should be increased for the in-service training of teachers, the development of curriculum materials, and research in multicultural education, particularly as it pertains to the Asian/Pacific American.
- Funding for bilingual education programs for the Asian/Pacific American should be substantially increased. More bilingual teachers need to be trained, and more and better designed curriculum materials need to be

developed. In addition to studying English as the fundamental language, ethnic language classes should be available.

Higher Education

- More programs in Asian/Pacific studies, bilingual tutoring, cross-cultural counseling, and ethnic studies should be funded to help meet the social, psychological, and academic needs of Asian/Pacific American college and college-bound students.
- Guidelines for financial aid programs should be reviewed and appropriately modified to increase financial aid to Asian/Pacific American students from low-income families, and to enable more Asian/Pacific American students from middle-income families to qualify for assistance.

Adult Education

Special English and job-training programs are urgently needed and should be made available to communities where there are large numbers of Asian/Pacific Americans.

Refugees

The Carter Administration is to be commended for its humanitarian efforts to assist Indochinese refugees. Support for various programs must be continued.

Increased support is needed for adult English and vocational training programs. There must be better coordination of programs by Government officials. Greater consideration should also be given to the cultural and linguistic differences among the various Indochinese groups.

Affirmative Action

Agencies responsible for enforcing affirmative action should recognize the plight of Asian/Pacific Americans on the basis of the Relative Labor Market (based on the pool of available personnel, not on straight racial quotas), designating Asian/Pacific Americans as disadvantaged minorities, and take vigorous action to eliminate inequities.

Asian/Pacific Position Papers

SCIENCE

Science and technology will be providing many of the solutions to problems facing the nation and the world in the 1980's. Asian/Pacific Americans have already made disproportionately great contributions to the explosive advances which have taken place in the last three decades. The commitment to scholarship and knowledge within our cultural traditions will continue to ensure Asian/Pacific American contributions to science and technology. Our scientists and engineers will play indispensable roles in maintaining our nation's leadership position in the world.

Asian/Pacific Americans, because of their biculturalism, can bridge differences between our nation and the developing countries in the Asian Pacific Basin. Our scientists and engineers are in the unique position of being able to provide technical assistance to these Third World nations. Their efforts will promote stability and economic growth in these crucial areas of the world as well as strengthen our nation's ties with these countries.

Yet the percentage of Asian/Pacific Americans in managerial, administrative, and decision-making positions is small compared to the numbers engaged in science and technology. They are often under-employed and under-compensated. Within the federal government Asian/Pacific Americans need appropriate representation in high-level science administration, advisory bodies, and review committees. For example, considering the large number of successful Asian/Pacific American scientists, we would want the National Science Board to include some Asian/Pacific American members.

In academia, studies show the Asian/Pacific American science faculty has an above-average percentage holding doctorates and a higher number of publications per person. Yet they are substantially underpaid, hold lower academic ranks, and rarely hold positions in administration.

Available statistics show similar status for the Asian/Pacific American scientist in industry and his counterpart in government. As our people are well-represented in technical fields because of selective immigration, a proportionate number should work in supervisory roles. But the Asian/Pacific American tends to be an isolated technologist in a specialized area. It takes him longer to become a supervisor. More need to be placed in decision-making positions such as marketing and planning.

Affirmative Action guidelines on Asian/Pacific Americans are confusing. While our people appear to be over-represented in science and technology, the representation is not based on the Relative Labor Market or the pool of available personnel. Brain drain, or the immigration of carefully selected, highly trained scientists, engineers, and other professionals, cannot bring equal opportunity to Asian/Pacific American youth.

We therefore call for the following actions:

- Asian/Pacific American scientists and engineers must be involved in policymaking. The National Science Foundation, the Department of Energy, the Education Department, and the various research agencies must make a vigorous and serious effort to recruit Asian/Pacific Americans for high-level decision-making positions and advisory bodies.
- Civil rights agencies must monitor employers of Asian/Pacific American scientists and engineers to ensure equal employment opportunities and compensation.
- Affirmative Action guidelines must be reviewed. A well-researched and clearly stated position from the Federal government should supplement good intentions and clarify verbal commitments.
- Corporate opportunities, such as management training programs, should be created to enable qualified Asian/Pacific Americans to make a transition from their field of specialization.
- Our scientists and engineers should adopt new attitudes toward involvement in public affairs. They need to be more involved in science leadership, health care for the disadvantaged, environmental issues, and the like. The more established and affluent groups and individuals should help promote the welfare of new immigrants and disadvantaged fellow Asian/Pacific Americans.

ASIAN/PACIFIC AMERICANS: POSITION PAPERS, 1980

The Asian/Pacific Position Papers which appear on the preceding pages represent the consensus of those attending the Asian/Pacific American National Leadership Conference, May 21-22, 1980 in Washington, D.C. The U.S.-Asia Institute would like to acknowledge the assistance of conferees as well as all of those who read and assisted with the drafting of this paper.

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Herbert Z. Wong, San Francisco
Chia Wei Woo, Ph.D., University of California, San Diego
John Young, Ph.D., Seton Hall University

The following pages detail the 1980 National Leadership Conference, its conferees, and participants.

Foreign Policy & Immigration

KEYNOTER: Hon. Richard C. Holbrooke
Assistant Secretary of State for
East Asian and Pacific Affairs

Focusing on Foreign Policy Toward Asian/Pacific Nations and Immigration and Refugee Policy in the 1980's, participants in the Foreign Policy and Immigration Workshop interacted with representatives from the U.S. State Department and experts in the field of immigration policy and law.

WORKSHOP CHAIR:

Dr. John Young. Dr. Young is a Professor and the Director of the Institute of Far Eastern Studies at Seton Hall University. He is one of the principle creators and Chairman of the National Advisory Council for East Asian and Pacific Affairs in the Department of State.

PANEL CHAIRS:

FOREIGN POLICY— Dr. John Young
IMMIGRATION—Benjamin Gim, Esq.
Mr. Gim is a New York attorney with the firm of Gim & Wong. He served as National President of the Association of Immigration Lawyers during 1977-78. He is a member of the Board of Directors of the International Center in New York City. He is a lecturer in Immigration Law at Columbia University. He serves on the Board of Lawyers' Committee for Human Rights, and the American Council for Nationalities Services.

PANELISTS:

Foreign Policy Presenters:
Dr. Nguyen Van Chau, Dr. King Chen, Paesun Im, Edward Leung, Dr. Toshiyuki Nishikawa, Vu K. Thu.

Foreign Policy Respondents:
Kenneth Bleakley and U.S. Department of State Desk Officers--China, India, Indochina, Japan, Korea, and Philippines.

Immigration Presenters:
William Hing, Esq., M. A. Koya, Esq., Wilma Sur, Esq., Pedro Lamdagan, Esq., and Dennis Mukai, Esq.

Immigration Respondents:
Mary Brandt, Rose Ochi, Esq., and Thomas Surh, Esq.

Foreign Policy & Immigration

BLEAKLEY, Kenneth	Mr. Bleakley is Special Assistant to Richard Holbrooke, Assistant Secretary of State for East Asian and Pacific Affairs.
BRANDT, Mary Rose	Ms. Brandt is a refugee officer with the Office of Refugees in the Department of State.
CHEN, King C.	Dr. Chen, is a Professor and Graduate Director in the Department of Political Science at Rutgers University. He has published numerous books and articles on Chinese foreign policy. He is also the Vice-President of the New Jersey Association for Chinese Culture and Heritage.
HING, William Ong	Mr. Hing is a San Francisco attorney and Assistant Professor of Law at Golden Gate University. He is a member of the Staff Advisory Group to the Select Commission on Immigration and Refugee Policy. Hing serves on the Board of Directors of the Asian American Bar Association, the Chinatown Resource Development Center, and the San Francisco Neighborhood Legal Assistance Foundation. He is the former Director of the Immigration Law Unit of the S.F. Neighborhood Legal Assistance Foundation.
IM, Paesun	Mr. Im is a student at Yale University, *summa cum laude* candidate with the Department of History. He is the leader of the school's Political Union.
KOYA, M. A.	Mr. Koya is an attorney in New York State who deals in the litigated practice of immigration law. He is a member of the District Court of the Southern and Eastern Districts of New York, and a member of the New York Bar since 1974. He is also a member of the Supreme Court of the United States.
LAMDAGAN, Pedro	Mr. Lamdagan is a Los Angeles attorney in private practice with an emphasis on immigration law. He is a member of the Board of Directors of the One-Stop Immigration Center, Inc. He serves as the Treasurer of the Filipino American Community of Los Angeles, Inc., and is a member of the Filipino Lawyers Association of Southern California.
LEUNG, Edwin	Dr. Leung is a Professor of International Relations at Seton Hall University. He is an expert on the People's Republic of China, East Asian International Relations, and bilingual education.
MUKAI, Dennis	Mr. Mukai is a Los Angeles attorney with the firm of Nishiyama, Mukai, Leewong, Evans, & Saldin. He specializes in immigration law, and has spoken on immigration law before the Minority Bar Conference in Los Angeles and the Japanese Bar Association. He is a legal advisor to the Korean Association of Southern California.
NISHIKAWA, Toshiyuki	Dr. Nishikawa is an assistant professor of Multi-Cultural Education at the University of San Francisco. He is concerned with the problems of Japanese-Americans and U.S.-Japanese relations.

Foreign Policy & Immigration

OCHI, Rose Matsui	Ms. Ochi is an attorney and executive assistant to the Mayor of Los Angeles. She is a member of the Select Commission on Immigration and Refugee Policy and a Director of the City Criminal Justice Planning Office.
SURH, Thomas	Mr. Surh is the Public and Congressional Affairs Officer for the Select Commission on Immigration and Refugee Policy. He has served as the Staff Attorney for the Legal Aid Society of Alameda County in Oakland, California, as well as the legal counselor to the Korean Community Service Center in San Francisco.
SUR, Wilma	Ms. Sur is a Los Angeles attorney in private practice. She has participated in the panel on Minority Immigration Problems before the Select Commission on Immigration and Refugee Problems in Los Angeles. She has a master's degree in Asian History from the University of Hawaii.
THU, Vu K.	Mr. Thu has served as a diplomat in London, Seoul, Manila, and Paris. He is currently Vice-President of the Vietnamese Senior Citizens Association of the Washington Area. His full-time job covers the field of immigration law and resettlement of displaced persons.
VAN CHAU, Nguyen	Dr. Van Chau is the coordinator of the Indo-Chinese Refugee Service in Southeast Texas. He is a founding member of the Indochinese Refugee Coalition, and was formerly the Secretary General of Pax Romana Vietnam.

International Trade

KEYNOTER: Hon. David J. Dunford
Deputy U.S. Trade Representative for Bilateral Affairs
with Office of the U.S. Trade Representative

Emphasizing the importance of Expanding U.S. Trade with Asia and talking very pragmatically about Trade Missions in the 1980's, conferees at the International Trade Workshop expressed thoughts on what could and should be done to encourage and develop more international trade in the Asian arena.

WORKSHOP CHAIR:

Jun Mori, Esq. Jun Mori is a Los Angeles attorney with the firm of Mori and Ota. He is a member of the President's Export Council and serves as Chairman of the Export Council's Oversight Task Force of the subcommittee on GATT. He is Vice-President of the Los Angeles Board of Harbor Commissioners, and a member of the Advisory Board to California's Office of International Trade. He is a member of the UCLA Foundation Board of Trustees and the Democratic National Committee's Finance Council.

PANEL CHAIRS:

EXPANDING U.S. TRADE—Dr. James Hsiung.
Dr. Hsiung, a Professor of Politics with New York University, is author of several books on China and maintains general interests in international relations and comparative foreign policy. He is Director of Graduate Studies and Director of the Modern Far East Program in the Politics Department at NYU. He chairs the Foreign Policy Commission, the Asian-American Assembly for Policy Research, and is on the Board of Directors of the Chinese-American Academic and Professional Association.

TRADE MISSIONS—Kenneth Char, Esq.
Mr. Char is Vice-Chair of Aloha Airlines and Vice-President of Air Micronesia, Inc. Among his wide range of activities, he is Director of Grand Pacific Life Insurance Co., Ltd.; Director of the Chinese Chamber of Commerce in Hawaii; Chairman of the East-West Center Board of Governors; Chair of the Governor's Advisory Council on China Affairs; member of the Hawaii Bar Association; member of the Hawaii District Export Council; Honorary Consul for the Republic of Nauru in Hawaii; Chairman of the Advisory Board, School of Public Management; and member of the President's Board of Foreign Scholars, International Communications Agency.

PANELISTS:

Expanding Trade Presenters:
Kenneth King, Jay W. Kim, Alan Chien, and George SyCip.

Expanding Trade Respondents:
Brooks Browne and Ray Eiselt.

Trade Missions Presenters:
Edward Lee, Charles Kim, Indravadan Shah, and Norman Lau Kee, Esq.

Trade Missions Respondents:
Brad Tyrrell and Joseph Whelan.

International Trade

BROWNE, Brooks	Mr Browne is an investment officer with the Overseas Private Investment Corporation.
CHIEN, Alan	Mr. Chien received his M.S. from Columbia University, N.Y. He is the Director of the Abacus Group of America, Inc., of N.Y. He is a leading U.S.-China trade specialist, and advisor to the Importers and Retailers Textile Advisory Commission of the U.S. Department of Commerce.
EISELT, Ray	Mr. Eiselt is the Regional Marketing Manager for Hong Kong, Japan, and Korea with the U.S. Department of Commerce.
KEE, Norman Lau	Mr. Kee is a New York attorney with the firm of Kee and Lau-Kee. He is the Chairman of the Federal Advisory Committee to the Immigration and Naturalization Service. He pursues a wide range of community activities, and is a member of the Board of Directors of numerous organizations including the Greater New York YMCA and the Hamilton-Madison House.
KIM, Charles	Mr. Kim is a prominent New York businessman, active in promoting trade between the U.S. and Korea in a wide variety of ventures. He frequently travels to Asia in his role as President of Metro Charles Co., Inc. Kim is a leading figure in the New York Korean American community where he serves as President of the Asian American Development Council and is active politically at the national level as a member of the Democratic National Committee's Finance Council. He serves as Treasurer of the U.S.-Asia Institute.
KIM, Jay W.	Mr. Kim is the Chief Executive Officer of JWK International Corp., a successful high-technology research firm, and Chair of the International Trade and Investment Corporation. He is a member of the Board of Trustees of the D.C. Chamber of Commerce, an honorary member of the Board of Directors of the Asian American Community Service., Inc., and a member of the Board of Directors of the League of Korean Americans.
KING, Kenneth	Mr. King is a partner in the firm of Bradbury, Erfan and King, Architects.
LEE, Edward	Mr. Lee is the Vice-President of the Taroco Capital Corp. of New York, and is a specialist in MESBIC financing.
SHAH, Indravaden	Mr. Shah is a management consultant in international marketing, trade, and real estate. He is a member of the Ethnic Panel to the Mayor of New York, and the former Vice-President of the Federation of Indian Associations. He is a member of the *ad hoc Committee of National Association of Asian Indian Organizations.*
SYCIP, George	Mr. SyCip is currently with the American Express International Banking Corporation. Born in the Philippines, Mr. SyCip has been in the U.S. since 1971, has studied International Relations at Stanford University, and has worked with various Asian American groups in California and New York.
TYRRELL, W. Bradley	Mr. Tyrrell is Chief of the Trade Missions Branch at the U.S. Department of Commerce.
WHELAN, Joseph	Mr. Whelan is the Director of the Investment Missions Program of the Overseas Private Investment Corporation.

Small Business

KEYNOTER: Hon. A. Vernon Weaver
Administrator
Small Business Administration

Discussing past accomplishments and future needs, those attending the Small Business Workshop examined the interrelation of Small Business and the Asian/Pacific American in the 1980's, and offered views on Community Economic Development for the Asian/Pacific Community.

WORKSHOP CHAIR:

Chan Tom. Mr. Tom is President and Chief Executive of Mah Chena Corporation, one of the largest importers of Oriental food products in the Midwest. He is a Commissioner of the White House Conference on Small Business. Mr. Tom is the Director of the Chinese Community Center in Chicago, and was responsible for obtaining tax-exempt status for the Chinese Consolidated Benevolent Foundation.

PANEL CHAIRS:

SMALL BUSINESS—Mai Hee Wallace.
Ms. Wallace is currently serving as Women's Business Enterprise Specialist in the Office of Women's Business Enterprise of the U.S. Small Business Administration. Prior to joining the staff at the national SBA office, Ms. Wallace worked in the Minority Small Business Capital Ownership Development division of SBA's Washington, D.C. district office. As a Ph.D. candidate, she also taught at the University of Maryland.

COMMUNITY ECONOMIC DEVELOPMENT—William J. Leong.
Mr. Leong is the initiator and Executive Director of the Chinese Economic Development Council. Mr. Leong established CEDC as the community development corporation for the Chinese-American community in Boston. Since its inception in 1974, the CEDC now has programs in housing, business, and community development. The CEDC receives its primary funding from the Office of Economic Development of the Community Services Administration.

PANELISTS:

Small Business Presenters:
George Pan, Bahk Sang, Alvin Joe, Pedro B. Supelana, David Chang, and Gordon Yamada.

Small Business Respondents:
Michael Casey, William Clement, and Phillip Sprague.

Community Economic Development Presenters:
Norman Chung, Jiro Yamaguchi, Esq., Gerald Wong, and Les Hamasaki.

Community Economic Development Respondents:
Richard Fleming, Steven Price, and Fred Ricci.

Small Business

CASEY, Michael	Mr. Casey is the Associate Administrator for Investments with the Small Business Administration.
CHANG, David	Mr. Chang, M.S., Ph.D., is the President of Taroco Enterprises and the Taroco Capital Corporation in New York City, and has extensive experience in small business and trade.
CHUNG, Norman	Mr. Chung is the Associate Director of New York Interface Development, Inc. He is involved in economic development, child welfare, and community development. He is a board member of the Asian American Legal Defense and Education Fund, and is currently researching the evolution of decentralized education since 1969, funded by the National Institute of Education.
CLEMENT, William	Mr. Clement is the Associate Administrator for Minority Small Business in the Small Business Administration.
FLEMING, Richard	Mr. Fleming is the General Deputy Assistant Secretary for Neighborhoods, Voluntary Associations, and Consumer Protection with the Department of Housing and Urban Development.
HAMASAKI, Lee	Mr. Hamasaki is an urban planner for the city of Los Angeles, as well as the Executive Director for the Japanese American Community Planning and Development Council, a non-profit voluntary community organization.
JOE, Alvin	Mr. Joe is the President of Geo/Resource Consultants, a geo-technical and geological firm. He is a member of the National Advisory Council to the State Department of East Asian and Pacific Affairs.
PAN, George	Mr. Pan is a Boston area businessman, founder and President of Systems Architects, Inc., a ten-year old computer company providing computer support to a number of government organizations such as the Depts. of Defense, HEW, Transportation, and the Consumer Product Safety Commission of the Small Business Administration, as well as to major industrial institutions. The company is also currently providing a Procurement Automated Source System (PASS) to the SBA on a nation-wide basis.
PRICE, Stephen	Mr. Price is a partner with Ken S. Sweet and Associates.
RICCI, Fred	Mr. Ricci is the Special Assistant to the Assistant Secretary for Economic Development in the Economic Development Administration.
SANG, Bahk	Dr. Sang is the President of Young Video, Inc. He is a member of the Presidential Advisory Committee on Small and Minority Business Ownership, and is an Adjunct Professor at Kean College, New Jersey.
SPRAGUE, Phillip	Mr. Sprague is the Associate Administrator for Management Assistance with the Small Business Administration.

SUPELANA, Pedro	Mr. Supelana is the President of Cosmopolitan Advertising, Inc. He is the immediate past President of the Filipino Executive Council of Greater Philadelphia, and the Chairman of the Eastern Region of the Congress of Filipino Americans. Mr. Supelana is an immediate past Grand Knight of San Raphael Council #7125 of the Knights of Columbus, and the President of the Philippines Center Foundation.
WONG, Gerald	Mr. Wong is the President of the Magnolia Plumbing and Heating Co., Inc., the only Asian American major mechanical contractor in Seattle. Mr. Wong is also the Vice-President of the Central Contrators' Association.
YAMADA, Gordon T.	Mr. Yamada retired in 1977 from a senior executive career assignment in the Federal Government after completing more than 32 years of service. Subsequently, he founded an international management consulting firm which now numbers about 45 employees. He is presently involved with foreign interests in development ventures.
YAMAGUCHI, Jiro	Mr. Yamaguchi is an attorney in private practice in Chicago, involved in the remodeling of old buildings. He is also the Treasurer of the Japanese Civic Association Credit Union.

Political Leadership & Organization

KEYNOTER: Hon. Spark M. Matsunaga
U.S. Senator
State of Hawaii

Taking a very pragmatic approach to Asian/Pacific American political involvement, those attending the Political Leadership and Organization Workshop exchanged ideas with public officials and political activists on Building a National Political Power Base for Asian/Pacific Americans, and encouraging State and Local Political Participation.

WORKSHOP CHAIR:

Judge Harry W. Low. Mr. Low serves on the Superior Court of California for San Francisco County and has been a judge for more than 13 years. He is the immediate Past President of the California Judge Association, serves on the State Judicial Council, and was editor of the California Courts Commentary from 1973-76. He is currently Chairman of the Education Center for Chinese, President of the San Francisco City College Foundation, Past President of the Chinese-American Citizens' Alliance, and serves on numerous civic and charitable organizations.

PANEL CHAIRS:

NATIONAL POWER BASE—Dr. Chong-sik Lee.
Dr. Lee is a professor of Political Science at the University of Pennsylvania and author of numerous books and articles on China, Japan, and Korea. One of his books (*Communism in Korea*, coauthored with Robert A. Scalapino) won the Woodrow Wilson Award of the American Political Science Association in 1975 as the best book published in the U.S. during the previous year in politics, government, and international affairs.

STATE & LOCAL PARTICIPATION—Judge William M. Marutani.
Mr. Marutani is a Philadelphia judge on the Pennsylvania Court of Common Pleas. He has served as National Legal Counsel and National Vice President of the Japanese American Citizens' League. He is a member of the Asian Law Caucus (New York and California), and the Asian American Council of Philadelphia.

PANELISTS:

National Power Base Presenters:
Williamson Chang, Robert Char, Ron Ikejiri, Esq., Ruth Watanabe, and Mike Masaoka, Esq.

National Power Base Respondents:
Congressman Daniel K. Akaka, Congressman Robert T. Matsui, and Congressman Norman Mineta.

State & Local Presenters.
Arlene Oki, Dean Fong, and Harry Joe, Esq.

State & Local Respondents:
Wilbur Luna.

Political Leadership & Organization

AKAKA, Daniel K.	Congressman Akaka represents the 2nd Congressional District in Hawaii.
CHANG, Williamson	Mr. Chang is an assistant law professor at the University of Hawaii at Manoa. He teaches corporate tax law, security administration, and water rights. He is currently conducting a research project on native Hawaiian rights, and is writing a book on security regulations.
FONG, Dean	Mr. Fong is Vice-President of the United Democratic Organization, and is on the staff for the Mayor of New York City.
IKEJIRI, Ron	Mr. Ikejiri is the Washington representative and chief legislative lobbyist for the Japanese American Citizens' League. He is a member of the Japanese American Bar Association of Los Angeles, as well as the Japanese American Democratic Club of Los Angeles.
JOE, Harry James	Mr. Joe is an attorney in private practice in Dallas, Texas. He is the Chairman of the Texas Chapter of the Association of Immigration and Naturality Lawyers. Mr. Joe is also Chairman of the Government Liaison Committee on Regional Commissioners for the A.I.N.L. He is serving on the Unauthorized Practice of Law Committee for the State Bar of Texas, and on the International Law Committee for the Dallas Bar Association.
LUNA, Wilbur	Mr. Luna is a Human Relations Specialist with the National Education Association.
MATSUI, Robert T.	Congressman Matsui represents the 3rd Congressional District in California.
MASAOKA, Mike	Mr. Masaoka is the President of Masaoka-Ishikawa Associates, an economic consulting firm. He served for over 30 years as the Washington, D.C. representative of the Japanese American Citizens' League. Masaoka has played a major role in all legislation benefitting Asian Americans since World War II. He is currently working on U.S.-Japan trade and other relations.
MINETA, Norman Y.	Congressman Mineta represents California's 13th Congressional District.
OKI, Arlene	Ms. Oki is the Special Assistant to the Mayor of Seattle. She is a Board Member of the Japanese American Citizens' League, a member of Asian Americans for Political Action, a Precinct Committeewoman since 1972, delegate to the 1976 Democratic National Convention, former co-chairperson of the King County Affirmative Action Committee, and member of the Washington State Affirmative Action Committee.
WATANABE, Ruth	Ms. Watanabe is an energetic and concerned leader of the Japanese American community in Los Angeles. She is a Board Member and Secretary/Treasurer of the Japanese American Community Planning and Development Council. She is a member of the California Republican State Central Committee.

Human Services

KEYNOTER: Hon. Sarah Weddington
Special Assistant to the
President of the United States

Addressing the humanistic and social needs of the Asian/Pacific community, participants in the Human Services Workshop covered only a few segments of the broad human services area, including: Social Services, Affordable Housing for Family and Elderly, and Health and the Asian/Pacific American.

WORKSHOP CHAIR:

Victorina S. Peralta. Ms. Peralta, MSW, presently Director of Adult & Aging Services, City of Philadelphia, is a nationally-recognized social worker in the field of aging who has received many awards for her outstanding contributions in the field of Human Services. She immigrated to the United States in 1965 at the height of her career as a nurse-social worker. Since then she has been an outspoken advocate for the benefits, rights and entitlements of Asian/Pacific Americans in the United States, particularly in the field of aging.

PANEL CHAIRS:

SOCIAL SERVICES—Dr. Herbert Wong.
Dr. Wong is the Executive Director of Richmond Area Multi-Services, Inc. He is also the Program Director and Principle Investigator of the National Asian American Psychology Training Center. He is the Principle Investigator for the Bay Area Indochinese Mental Health Project and a member of the Board of Directors of the Asian American Psychological Association.

HOUSING—Thomas Hsieh.
Mr. Hsieh is President of the firm, Thomas Hsieh, AIA Architects. The firm specializes in hospital and housing projects located in the states of California, Nevada, Utah, New Mexico, and Arizona. He is the Director of the Bay Area United Way and the Marshall Hall Memorial Hospital. Mr. Hsieh is also the Chairman of the U.S./China Relations Committee of the San Francisco Chamber of Commerce. He has been a member of the California State Democratic Party and the White House Conference on Aging.

HEALTH—Dr. Richard Hsieh.
Dr. Hsieh, Dr. Ph., M.D., is a member of the faculty of the Health Services Administration at the School of Hygiene and Public Health at Johns Hopkins University. He is also the Chief of Health Services Research, Public Health Services Hospitals.

PANELISTS:

Social Services Presenters:
Edwin Hiroto, Annie Chung, Jackie Bong Wright, and Dr. Helen Nagtalon-Miller.

Social Services Respondents:
Roberto Anson, Eleanor Bader, and Hon. Al Stern.

Housing Presenters:
Cecilia Yep, Edward Chin Park, Dr. Youn Chey, and Gordin Chin.

Housing Respondents:
Anthony Freedman and Alex Pires.

Health Presenters:
Dr. Alex Alexander, Dr. Steven Shon, Francis Chang, Esq., Dr. Ray Murakami, and Dr. William K. K. Wan.

Health Respondents:
Evelyn Lee, Dr. Samuel Lin, and Dr. John Marshall.

Human Services

ALEXANDER, C. Alex	Dr. Alexander, M.D., M.Ph., Dr. Ph., is the Chief of Staff at the Veterans Administration Hospital in Dayton, Ohio, as well as Clinical Professor in the Department of Community Medicine at Wright State University School of Medicine in Ohio.
ANSON, Roberto	Mr. Anson is a Policy Analyst at the White House Conference on Aging.
BADER, Eleanor	Ms. Bader is the Special Assistant to the Associate Commissioner for External Affairs of the Social Security Administration.
CHANG, Francis	Mr. Chang is a lawyer, and the Executive Director of the South Cove Community Health Center in Massachusetts.
CHEY, Youn	Dr. Chey, Ph.D., is the Executive Director of the Multiservice Center for Koreans in San Francisco. Dr. Chey received her Ph.D. in Russian language and literature from Yale University.
CHIN, Gordon	Mr. Chin is the Executive Director of the Chinatown Neighborhood Improvement Resource Center. His agency is engaged in planning and implementing housing, open space, neighborhood street, and transportation improvements in San Francisco Chinatown.
CHUNG, Annie	Ms. Chung is the Project Director of Senior Employment and Training at Self Help for the Elderly in San Francisco. She is a member of the National Home Caring Council, Inc., a national body which coordinates home health care programs. She is also a member of the Asian/Pacific American Elderly Resource Center.
FREEDMAN, Anthony	Mr. Freedman is the Acting Deputy Secretary for Policy and Budget at the Department of Housing and Urban Development.
HIROTO, Edwin	Mr. Hiroto is the Chief Executive Officer for City View Hospital, the Keiro Nursing Home, and the Japanese Retirement Home. He is highly active in the Japanese American Community in Los Angeles.
LEE, Evelyn	Ms. Lee is a Social Science Analyst at the Alcohol, Drug Abuse, and Mental Health Administration.
LIN, Samuel	Dr. Lin, M.D., Ph.D., is the Director of the Office for Europe in the Office of International Health, U.S. Public Health Service.
MARSHALL, John	Dr. Marshall is the Deputy Director of the Bureau of Community Health Services in the Health Systems Administration.
MURAKAMI, Ray	Dr. Murakami is in private dental practice. He is a member of numerous dental organizations and associations and has participated in a number of lectures, scientific sessions, and seminars. He has served as a consultant to the State Department in the dental field. He has published and prepared visual aids, handbooks, and manuals on being a dental clinican.

Human Services

MILLER, Helen Nagtalon-	Dr. Miller is Project Coordinator of the Disadvantaged Minority Recruitment Program of the School of Social Work, Univ. of Hawaii. She was previously with the Dept. of Educational Foundations, Curriculum Research Development Group, and the European Languages Dept. of the Univ. of Hawaii. She is the former Administrator of the Hawaii Bilingual/Bicultural Education Project. She is Chairperson of the Ethno-Cultural Task Force of the State Mental Health Division, member of the State Mental Health Advisory Council, and member of the Board of Directors of the Mental Health Association in Hawaii.
PARK, Edward Chin	Mr. Park is an architect from MIT. He received an M.A. in architecture from Harvard as a student of Walter Gropius, and specializes in Bauhaus design. Mr. Park also has an M.A. from Harvard in city planning. He has a particular interest in urban planning and Chinese community development in Boston and in Washington, D.C. He is a Washington, D.C. government consultant on the Chinese community.
PIRES, Alexander	Mr. Pires is the Deputy Assistant Secretary for Multifamily Housing in the Department of Housing and Urban Development.
SHON, Steven	Dr. Shon, M.D., is the Director of the Adult Service Richmond MAXI Center. He is also a training coordinator for the Bay Area Indochinese Mental Health Project. He is a Clinical Professor at the University of California in the Department of Psychiatry. He is Chairman of the Board of Directors of the Korean Community Service Center, and Chairman of the National Consultation for Asian/Pacific American Mental Health.
STERN, Al	Mr. Stern is the Associate Director of the White House Domestic Policy Staff.
WAN, William K. K.	Dr. Wan, M.D., D.Ds., D.Ph., received his dental degree in Australia and his M.D. from Loyola University Medical School. He is in private practice in medicine and dentistry in Chicago. Dr. Wan is a former full-time faculty member of Loyola University Dental School.
WRIGHT, Jackie Bong	Ms. Wright is the Director of the Indochinese Refugee Social Services and a consultant for ACTION. She has been active in resettlement and social service programs for Indochinese refugees. She is a member of the National Advisory Council for East Asian and Pacific Affairs, and former Chairwoman of the Planning Committee of the Business and Professional Women's Club of Vietnam.
YEP, Cecilia	Ms. Yep is the Executive Director of the Philadelphia Chinatown Development Corporation. She is also a member of the Mayor's Complete Count Committee, Census '80, and a recipient of the Human Rights Award from the City of Philadelphia Commission on Human Rights.

Education & Science

KEYNOTER: Hon. Josue Gonzales
Assistant Secretary for Bilingual Education and
Minority Affairs, U.S. Department of Education

The Education and Science Workshop examined the worlds of science and education as they affect the Asian/Pacific American, and participants made observations/suggestions for the role of the Asian/Pacific community in progressing to the 1980's.

WORKSHOP CHAIR:

Dr. C. W. Woo. Dr. Woo is the Provost of Ravelle College and Professor of Physics at the University of California at San Diego. He has written over 100 publications in theoretical solid state and liquid state physics. Dr. Woo is President of the Chicago Chapter of the National Association of Chinese Americans, and a member of several National Science Foundation Advisory Committees.

PANEL CHAIRS:

SCIENCE—Dr. Winberg Chai.
Dr. Chai is the author of more than 15 books and numerous articles on history, culture, philosophy, and society, and is the former Vice-President for Academic Affairs at the University of South Dakota. He is presently distinguished Professor of International Studies and Humanities, and Assistant to the President of the University of South Dakota.

EDUCATION—Dr. Raj Prasad.
Dr. Prasad is the Superintendent of Schools of San Mateo County, California.

PANELISTS:

Science Presenters:
Dr. H. C. Lin, Dr. Stringner S. Yang, Dr. Daniel Watanabe, and Dr. Shih-kung Liu.

Science Respondents:
William Der Bing, Dr. Marjorie Gardener, and Dr. Toni Joseph.

Education Presenters
Dr. Robert Suzuki, Dr. Nguyen Ngoc Bich, Dr. Byung H. Nam, and Dr. Vergie Chattergy.

Education Respondents:
Dr. Gladys Hardy and Dr. Kyo Jhin.

Education & Science

BICH, Nguyen Ngoc	Mr. Bich is a Vietnamese Resource Specialist in Arlington, Va. He is a national consultant on refugee education, and a state delegate to the National Association for Vietnamese-American Education. He is also a member of the National Association for Asian/Pacific American Education.
CHATTERGY, Vergie	Dr. Chattergy is an Associate Professor of Education at the University of Hawaii at Manoa.
DER BING, William	Mr. der Bing is Manager of Protocol and Community Affairs at the Lyndon B. Johnson Space Center in Houston. He helped found the Houston Chapter of Chinese Associations. He was also Past President of the Chinese Professionals Club.
GARDENER, Marjorie	Ms. Gardener is the Director of the Science Education Resource Improvement Division of the National Science Foundation.
HARDY, Gladys	Dr. Hardy is the Acting Director for Management at the National Institute of Education.
JHIN, Kyo Rhoon	Dr. Jhin is the Acting Executive Officer of the Office of School Improvement in the U.S. Department of Education. He is the former Executive Director of the Alabama Regional Education Service Agency, as well as Vice-Chairman of the National Advisory Council on Adult Education. Dr. Jhin was selected as one of the Four Outstanding Young Educators of America by the U.S. Jaycees in 1969, and is a member of the President's Club of Alabama and the Alabama Democratic Club.
JOSEPH, Toni	Dr. Joseph is the Associate Director for Field Operations Management with the U.S. Department of Energy.
LIN, H. C.	Dr. Lin is a Professor of Electrical Engineering at the University of Maryland. His field is in semi-conductor and integrated circuits. He is a Fellow of the Institute of Electrical and Electronic Engineers, and a member of the Chinese Institute of Engineers. Dr. Lin is a Charter Member of the Organization of Chinese Americans.
LIU, Shih-kung	Dr. Liu is a Research Group Leader with the Monsanto Company. He is the National Vice-President of the Organization of Chinese-Americans. He received his Ph.D. in chemistry from Florida State University in 1955.
NAM, Byung H.	Dr. Nam is a Professor of Education at Pace University in New York, and author of numerous publications on education and psychology. He is a leading member of the Korean community of New York, where he serves as a member of the Board of Directors of the Korean Association of New York. He is a member of the National Advisory Council on East Asian and Pacific Affairs, and a member of the Commission on Presidential Scholars.
SUZUKI, Robert	Dr. Suzuki is a Professor of Education at the University of Massachusetts at Amherst. His areas of specialization are in Asian-American Studies and Multicultural Education.

WATANABE, Daniel	Dr. Watanabe is a Research Assistant Professor at the Baylor College of Medicine. He is the First Chairman of the Annual Asian American Festival in Houston. Dr. Watanabe is also a member of the Japanese American Citizens' League, and the former President and now member of the Japanese American Cultural Exchange Society in Syracuse, New York.
YANG, Stringner S.	Dr. Yang is a senior investigator (chemistry) engaged in cancer research at the National Institute of Health. She is a member of Sigma Xi, the American Society of Cell Biology, the American Association for Cancer Research, the American Association for the Advancement of Science, the American Association of Tissue Culture, and a Charter Member of the Organization of Chinese-Americans. She also sings Chinese Opera.

1980 Leadership Conference

DELEGATES

In an attempt to draw a geographic and ethnic cross section of participants, the 1980 Conference Committee established a system of delegate selection whereby delegates were chosen from nine pre-established regions: New England, New York/New Jersey, Mid-Atlantic, South, Midwest, Pacific Northwest, Los Angeles, San Francisco, and Pacific Island. Delegates to the Conference were given full voting privileges in the formulation of the Asian/Pacific position papers included in this Journal.

The individuals listed on the following pages were chosen to represent their respective regions at the 1980 Asian/Pacific American National Leadership Conference:

Vinod Agarwal
Alice Barkley
Jocelyn Barton
Eleanor Der Bing
May Chan
Michael Chan
Rak Chandulal
David Chang
Si Wha Chang
Steven Chang
Chiang Cheng
James Cheng
Thomas Cheng
Tuan Cheng
T. T. Chiang
Louis Chin
Patrick Chin
Peter Chin
Muzaffar Chishti
Kwang Nam Cho
William Cho
Byung Chul Choi
Peter Hai Chung
Tommy Chung
Carey Coi
Ray Dianapeles
Soichi Fukui
Jackson Gin
Robert Guen
Dung Nguyen Guoc
Henry K. Han
Tony Hom
Mike Ito
Ginnie Joe
Glenda Joe
Joe Jung
Ik Jo Kang
Carol Kawakami
Charles K. Kim
Choong Jae Kim
David Daehyun Kim
Jae Sul Kim
Henri U. Kim
San Jim Kim
Sang Whal Kim
Ethel Kohashi
Han Mo Koo
Florence Kong
Takeshi Kubota
David W. Kwon
Krishna Lahiri
Collin Lai

C. C. Lau
William Leary
Dong Ho Lee
Dong Soo Lee
Edward Eung Ho Lee
Gene Lee
Hedy Lee
James Lee
Rosi Lee
S. T. Lee
Ting Lan Lee
Won Chul Lee
Won Mo Lee
Dennis Li
Thomas Li
Y. T. Li
Nguyen Dang Liem
Bob Lim
Myung Sook Lim
Young Sup Lim
Dolly Lo
Jennie Lowe
Jimmy Lu
Mimi Chan Luk
Frank M. Miu
Kwang Huan Moon
Fe Nievara
Ron Ohata
Do Young Paik
George Pan
Karen Pan
Hee Soh Park
Hyun Sun Park
Hyung Joo Park
Ji Wun Park
Kap Young Park
Richard Sang H. Park
Siun Park
Sook Nyu Park
Reynaldo Pascua
Bhailal Patel
Kyung Hoon Pyio
Chong Hie Rah
So Chul Rah
Chase C. Rhee
Chul Gyu Rhee
Socorro D. Rhee
Thomas Sakata
Lani Sakoda
Suren Saxena
Sung Kook Shin
Yong Chul Shin
Sharon Soohoo
Dao Spencer
Yee Yee Lay Stein
Patrick Sung
George Taki
Robert Ting
Cherry Tsutsumida
Gonzalo Velez
Dely Villalon
Anna Wan
Kung Lee Wang
Peter Weirsman
Nicholas Wong
Po Wong
Gerald Yamada
Chung S. Yang
France Yokoyama
Jim Ho Yum

Our apologies to anyone not appearing on this list who served as a delegate to the 1980 National Leadership Conference.

U.S.-Asia Institute

BOARD OF DIRECTORS

The U.S.-Asia Institute is governed by a Board of Directors which has ultimate responsibility and authority for the overall management and policies of the Institute. The Executive Director oversees the Institute's staff in Washington, D.C., manages the financial and business affairs of the Institute, and acts as the chief executive responsible to the Board in the formation of Institute policy.

Chan Tom, III, is a highly productive and motivated, young, Chicago businessman, heavily involved in several affiliated corporations. As managing officer of Chinese Trading Company and Chinese Noodle Company, he is directly responsible for these profit centers, and under his dedicated and enthusiastic leadership, these profit centers have demonstrated remarkable growth. He is a board member of the Lekel Chop Suey Pail Company, and is active in the Chinese business community aiding specifically in Chinese festivals, New Year Fund Raising Dinners, and other Chinese civic activities. Politically, he is active in the Democratic National Committee. He serves as Chairman of the Board of Directors for the U.S.-Asia Institute.

Charles Kim is a prominent New York businessman active in promoting trade between the U.S. and Korea in a wide variety of ventures. He frequently travels to Asia in his role as President of Metro Charles Co., Inc. Kim is a leading figure in the New York Korean American community where he serves as President of the Asian American Development Council and is active politically at the national level as a member of the Democratic National Committee's Finance Council. He serves as Treasurer of the U.S.-Asia Institute.

Ruth Watanabe is an energetic and concerned leader of the Japanese American community in Los Angeles. Her interest in the welfare of the Asian community is exemplified in her role as Board Member and Secretary/Treasurer of the Japanese American Community Planning and Development Council which is coordinating a multi-million dollar development project in Little Tokyo in downtown Los Angeles. The project will include a variety of cultural, business and public service facilities. She has been active in Republican party activities in the Southern California area. She serves as Secretary of the U.S.-Asia Institute.

Joji Konoshima has had a long, active history in New York labor politics. The powerful New York Teacher's Union served as a classroom for Konoshima who helped to form that union during the 1960's. He convinced the union to give its early support to Hugh Carey in his first bid for Governor of New York. From there, he springboarded into national politics by pioneering support for Jimmy Carter's 1976 Presidential Campaign. He is currently involved in a wide variety of political and public service activities. He is the Director of the Asian/Pacific American Unit of the Democratic National Committee, Executive Director of the U.S.-Asia Institute, and a member of the Federal Advisory Committee to the Immigration and Naturalization Service.

Esther G. Kee is a whirlwind of energy with a myriad of interests and accomplishments. She has successfully managed her own business, worked with numerous community associations and development organizations, coordinated political functions and fundraisers for national candidates as far back as 1956, served on the Citizens Advisory Board for WNET-TV and more, while doing an admirable job of raising her five children. She is the National Coordinator of the Asian/Pacific American Unit of the Democratic National Committee and Associate Executive Director of the U.S.-Asia Institute. She has a leading voice in the direction of the the U.S. State Department through her service on the President's Advisory Board on Ambassadorial Appointments and the State Department's Selection Board Advisory Committee.

George Aratani is a Los Angeles businessman active in international trade and Japanese American community affairs. He has presided over the successful growth of two corporations which he serves as Chairman—American Commercial, Incorporated and Kenwood Electronics, Inc. Aratani serves as Director of the Japanese Retirement Home and Director of the Los Angeles Area Council, Boy Scouts of America.

U.S.-Asia Institute

Kenneth Char has been a key figure in the development of Hawaii's travel and tourist industry as Vice-Chair of Aloha Airlines and Vice-President of Air Micronesia, Incorporated. The range of his activities and public service is truly astounding with contribution of his time and efforts to state and national organizations. He is a Director of Grade Pacific Life Insurance Co., Ltd.; Director of the Chinese Chamber of Commerce, Hawaii; Member of the Board of Foreign Scholars, International Communication Agency; Chair of the Governor's Advisory Council on China Affairs, Hawaii; Member of the National Advisory Council for East Asian and pacific Affairs; Member of the Hawaiian Bar Association; Member of the Hawaii District Export Council; Honorary District Consul, Republic of Nauru; and Chair of the President's Council on Foreign Scholars.

Glenn Lau-Kee is a New York attorney involved in corporate, immigration and international law with the firm of Kee and Lau-Kee. He was formerly with the leading international law firm of Coudert Brothers in New York, and he has also obtained legal experience in Asia. Lau-Kee is active in New York Chinatown civic affairs, serves on various YMCA boards, and serves on the President's Advisory Board of the Borough of Manhattan Community College, City University of New York. He is politically active with the Democratic National Committee Finance Council.

Norman Lau-Kee is a New York attorney with the firm of Kee and Lau-Kee. His practice has made him a leading expert on immigration law—acknowledged by his appointment to the Federal Advisory Committee to the Immigration and Naturalization Service, which he chairs. He is a leading figure in the political arena in his role as Deputy Campaign Chairman for Asian/Pacific American Affairs for the Carter/Mondale Presidential Campaign and as a member of the Executive Committee of the National Finance Council at the Democratic National Committee, the Committee's key finance group. He pursues a wide range of community activities and is a member of the Board of Directors of numerous organizations as well as business corporations. Lau-Kee served as a Human Rights Commissioner for New York during the administration of Mayor Abraham Beame.

Jun Mori is a Los Angeles attorney with the firm of Mori and Ota, a firm known for its representation of the subsidiaries of some of Japan's largest corporations. He pursues his concern for the U.S. role in international trade as a member of the President's Export Council which is at the forefront of the U.S. export trade effort. He is the Chairman of the Export Council's Foreign Oversight Task Force of the subcommittee on GATT and Vice-President of the Los Angeles Board of Harbor Commissioners and a member of the Advisory Board to California's Office of International Trade. His dual Japanese and American background provides the basis for the promotion of relations between the two countries in his role on the Committee on Pacific Basin Studies, University of California at Los Angeles. He is a member of the UCLA Foundation Board of Trustees and the Democratic National Committee's Finance Council.

John Young promotes relations between Asia and the U.S. in his role as Professor and Director of the Institute of Far Eastern Studies at Seton Hall University. He is the author of numerous publications on Asian studies and has extensive experience with research projects in bilingual and bicultural education in the U.S. Young has a deep concern and interest in Asian language and culture and has contributed greatly to training persons as interpreters. His concern for foreign policy caused him to be one of the principal creators of the National Advisory Council for East Asian and Pacific Affairs and the eventual Chairman of the body which serves as a liaison between the State Department's Bureau of East Asian and Pacific Affairs and the Asian/Pacific American community.

U.S.-Asia Institute

ACKNOWLEDGEMENTS

The U.S.-Asia Institute would like to acknowledge the generous support and assistance of all those who played a part in the Conference—its preparation and followup activities.

SPECIAL ACKNOWLEDGEMENT goes to **Senator Daniel Inouye,** Hawaii, who keynoted the Plenary Session of the Conference.

SPECIAL THANKS TO:

1980 Conference Committee
Workshop and Panel Chairs
Presenters and Respondents
Workshop Recorders
Delegates to the 1980 Conference
Volunteers who prepared materials and staffed the Conference sessions

Regional Coordinators:
- George Pan — New England
- Charles Kim, Dr. Bahk Sang, Dr. John Young — New York/New Jersey
- Dr. Jay W. Kim — Mid-Atlantic
- William and Eleanor Der Bing — South
- Tom Chan — Midwest
- Rey Pascua and Arlene Oki — Pacific Northwest
- Thomas Hsieh — San Francisco
- Siun Park — Los Angeles
- Kenneth Char — Pacific Islands

Individuals and Corporations who sponsored the 1980 Journal

Mary Sue Bissell for editing the Journal

and *all* our friends and supporters.

Mr. **Mazzoli**. Thank you very much, Mr. Kee. I will yield myself 5 minutes, if I could.

Ms. Martinez, I can understand your situation in one respect, worrying about carrying a new card or using your social security card, because it might be used to discriminate against someone who does not look like an American. There are probably some people sitting up here right now that, if you want to talk about Americans as being Anglo-Saxons, do not look like Americans. And yet we carry cards and we show them to policemen, to get in or out of a building. We show them to the people at the supermarket to cash our checks. I do not have any particular untoward experiences with law enforcement.

You obviously have studied this matter. But you can find no possible way in which such a card could be used, but not abused? You find no way such an identification could not be used to single you out for some type of static or hassle, but in fact would allow you to get a job at a good wage, where sometimes that is not the case now?

Ms. **Martinez**. I understand that some of you think that is possible and I believe Father Hesburgh thinks that possible. Otherwise he would not be supporting the concept of employer sanctions with an ID card. But I heard Father Hesburgh argue that this would in fact help us prove our status and get government off our backs.

I heard that argument. But I guess I have lived in this country too long. I have been hassled too much. I have represented American citizens who have been beaten up, decorated Vietnam war veterans in the San Jose cannery during an INS raid. When you represent people in these types of situations and you see what happens to them——

I would urge you to read the story in the New York Times on the front page a few days ago, where the McAllen police department in Texas has been accused of police brutality and they said, there is no police brutality here. They put cameras in there and the cameras have now documented the police abuse of Mexican Americans.

Mr. **Mazzoli**. Do not misunderstand. I know police brutality exists and I know there are bad apples in every barrel, and I am sure there is a whole series of things that you have seen that I may not have seen myself.

But what I am saying to you is, you and I right now use cards. You have to show your bar association card to get a right to vote in a bar association meeting. We are always using some cards to identify us as John Jones or Mary Smith or Ron Mazzoli or whomever.

All we are saying is that here is a way to identify a person as a person who has a legitimate right to have a job. With great respect, of course, for your panel, I share your concerns and I was going to ask them the same things. I tend to feel more as Father Hesburgh does, that without giving into the forces of evil, you can develop a plan that will identify people without at the same time setting a person up for being singled out for some kind of racial or sexual or religious persecution.

Ms. MARTINEZ. Congressman, as a lawyer I have yet to see such a plan. And I guess what I am saying is, I have no difficulty with the identifying part, but it becomes a stigma.

Mr. MAZZOLI. What is stigmatic about carrying a card to show that you are a member of a bar association or that I am a licensed driver? Where is the stigma there?

Ms. MARTINEZ. There is none there, but we are talking about a different situation.

Mr. MAZZOLI. It would be the stigma of being able to have a job or not being able to have one. Would that not be the situation?

Ms. MARTINEZ. The stigma is how many people will hassle you and how many others will hassle Mexican Americans.

Mr. MAZZOLI. If I go in to get a job, and it seems like second nature to whip out my card and say, here I am, and I can take the job, what is the problem?

Ms. MARTINEZ. I know you believe that. But I live in another part of the country where I do not believe that will happen. I believe what will happen is that you will go in and because you have white hair and you are distinguished looking they are going to assume that you are a true-blue American. But I believe that I might go in there looking the way I look and they will not give me the same benefit of the doubt. That is what I believe.

Mr. MAZZOLI. I was referring to myself as maybe in some parts of America not looking like an American. My father was not born here in America and I have features that are not Anglo-Saxon. I am sure I could walk into a place and they could say, "Hey, this guy does not belong here."

But if I have a card which states that I do have a right to belong and I do have a right to get a job and they cannot hassle me at that point, that may be better than letting them hassle me because they think I am an illegal or they think that I am undocumented.

I have used virtually all my time. It is an interesting discussion.

The gentleman from Wyoming.

Senator SIMPSON. I really appreciate hearing your testimony. In my privileged time with the Select Commission and the hearings throughout the country, your views were heard. And they are still the same and I hear them again.

And to you, Mrs. Martinez, there is no question in my mind that the Hispanic people feel the most threatened in this entire arena, and for good reason. They have the most to lose. And let us start with that premise. And I think that is very real. I really understand what you are saying.

Your organization is stating, through your testimony here, that you are opposed to employer sanctions, opposed to increased border enforcement, opposed to temporary worker programs, and in favor of granting permanent resident status to all of those persons who managed to enter illegally. You state that existing labor laws should be vigorously enforced, and the Select Commission agreed on that by a vote of 16 to nothing; and that this measure will effectively control illegal immigration.

And yet there are many, many who contend that it is really simply the ready availability of these workers in our labor market which leads them to be hired and not an attempt to exploit them, so that even at the minimum wage certain employers will continue to prefer them over U.S. workers.

I guess I am saying, is enforcement of existing labor law the only measure which your organization can offer to us as the committees that will grapple with this thing in a most extraordinary struggle? Is that the only thing you can give us, as an advocate, to cope with the current massive violations of our immigration laws in the United States?

Ms. MARTINEZ. I think we have tried to suggest more than that. I think we have tried to suggest that the solutions are not all to be found in the catchword that we call immigration. Many of the solutions are long term. They are to be found in helping Mexico help itself, in relieving the push in the push-pull factors.

I think it is true, and that is a constructive way to look at the issue, instead of penalizing Mexican Americans and other foreign-looking Americans. I think that if you are looking for the solutions, I think they are there. But I do think that they are long range.

I would like, if I could, to say just one thing about—you say that you want permanent resident alien status for those folks who are here who came in illegally, et cetera. I would like to explain why——

Senator SIMPSON. I only have a certain amount of time for my questions. I want to develop that, if I may. I will certainly hear that out, but I had a couple of other questions, because it has to do with what Senator Kennedy was saying and also what Congressman Mazzoli, our chairman, was saying.

You oppose the employer sanctions and I hear those reasons. You believe that discrimination will take place against Mexican Americans and other minorities and that it will be increased because these employers will be interpreting the immigration laws as these people present themselves.

Yet, in an effort to counteract those effects, the Select Commission overwhelmingly agreed that these employer sanctions would be based upon this secure, counterfeit-resistant form of identification, whether it was a card or whether it was a data system or a phone system. And the thing that I keep coming back to, that card or that identification will be required to be presented by all American citizens at the time they go to get a job. If it is a card, it will not have to be carried on the person other than at that time.

This is what I want to keep drawing back to. Nowhere have we said that we are going to let the Anglos off or the existing Americans off and just give the card to illegals. We are talking about a card whether it is a social security card, if we go to a card, revised, or what we are talking about something that is presented at the time of seeking employment by every single American, every single person.

So where are we with the discrimination aspect?

Ms. MARTINEZ. In the implementation, Senator. You know, I can see—I can read what the Select Commission wrote. But I am also aware of what happens between a law and the implementation of that law.

The law is that local police officers may not stop people who they think are illegal. The implementation is that they do.

Mr. MAZZOLI. The gentleman's time has expired.

I guess I should not interject a thought, but it would be so much more helpful to us, if you could give us some wisdom, instead of just simply saying that everything which has been presented, not just by us but by this Commission, you cannot go along with.

Maybe that is the situation. But you know, the law is going to be written one way or the other. Something is going to emerge from this Congress, in all likelihood, and I would love to see it bear some part of the imprimatur of MALDEF.

The gentleman from New York, Mr. Fish, is recognized.

Mr. FISH. Thank you, Mr. Chairman.

I thank the panel and, like other Commissioners on the panel today, I welcome you all back.

I tell you what, Ms. Martinez. You can be counted on to make us think. I was almost in favor of a foolproof ID card carried by every person in the country, because I figured that was the only way of avoiding the threat of discrimination against Hispanics. And now you have challenged that idea quite vigorously.

I also want to respond briefly to some of the things you said, because we did, in my judgment—your very harsh criticism of the Commission does not really take into account the fact that we did listen. In fact, I think that the basic structures of the basic issues that we dealt with in terms of legalization and a totally new immigration policy in terms of numbers is definitely tilted in favor of Hispanics.

In your four points, you call for recognition and expanding of traditional family reunification policy. That is the cornerstone of the admission policy that the Commission recommended. The 150,000 outside the numerically limited people would be all immediate relatives.

The legalization program has a bearing on this, because once you are granted permanent residence you have a right to petition, and as you become a citizen a few years later you have a right to petition, and who is going to be doing this? Well, certainly those countries which have the most—are the most recent stock are the only ones with near relatives abroad.

So it is going to be China and India and the Philippines and Korea and the Dominican Republic and Mexico and Cuba and Columbia. That is going to be the next generation of immigrants into the United States through our family reunification policy, because people who have been here for 40 or 60 years do not have parents and spouses and children abroad.

We then provided, realizing that there are a million outstanding visa petitions around the world, Mexico I think being the largest, we provided for 5 years extra, which in your testimony you refer to as a modest temporary increase of 100,000 a year in worldwide visa allotments proposed by the Commission, which would not reduce the Mexican backlog as long as the per-country limitation remains unchanged.

Well, the specific recommendation of the Commission is that country ceilings apply to all numerically limited family reunification preferences except that for the spouses and minor children of permanent resident aliens, who shall be admitted on a first-come-first-served basis, with a worldwide ceiling set for that preference.

And I think that is again in recognition of where the problem is, and I thought we had helped to address it.

The third point, by adjusting the status of undocumented workers who have equities in our society to permanent resident alien status, of course we all agree on, except that you disagree with the call for enforcement to be in place first, and that is the first time I have heard that expressed.

Everybody else seems to be of the view that if we granted legalization tomorrow morning, next year or whenever, based on any date, that unless you had enforcement in place—and enforcement under the Commission report is known as the employer sanction primarily—that you simply have everybody and his brother coming into the country in order to qualify. And no matter what date we pick, the easiest document you can procure either outside the country or inside the country is proof of the fact that you have been in the country for the required number of months or years.

So I merely want you to look at what we have done and see if you do not agree with me. We are not going to resolve the issue today, but I thought we had gone a long way in being true to the traditions of this country and to attempting to deal with, A, the backlog in visa applications and B, the family reunification matters, and C, the adjustment of status by people here.

My time is just about up, Mr. Chairman.

Ms. Martinez. Can I respond a bit to that?

I have thought long and hard about your comments and I truly value them, Congressman Fish. I guess I fear some of the traditions of our country. One of them is the scapegoating phenomenon. During the Depression we repatriated the Mexicans and their U.S.-born children. During the 1954 recession we had Operation Wetback; ferret out those illegals and ship them back to Mexico.

I fear those traditions and I fear that the climate, the tenor of the discussions that immigration is out of control, that there is nothing positive in immigration, there is nothing positive from these people, those are the things that I worry about, because the only person who said anything positive about it yesterday was Congressman Frank. And I went and thanked him for it, because I did not hear it all day long.

And legalization may or may not benefit the Mexican community. If you have a continuous residency requirement, if you look at the Carter plan proposals on legalization, the INS chief indicated that Mexicans would not benefit, that the people who would benefit would be students who had overstayed their visas.

These are the bits of information that I have and the fears that I have.

Mr. Mazzoli. Thank you.

The time has expired, but the Chair is constrained to say that I sat through those hearings yesterday for 3½ or 4 hours and heard a wide range of testimony, and yet you say the only thing positive you heard came from Mr. Frank. I have great respect for my friend from Massachusetts and he did say some kind things. Would you mean to say that nobody else on that panel and all of us who were there said anything positive? Nothing positive emerged from yesterday's meeting, with the exception of the statement of the gentleman from Massachusetts?

Ms. **Martinez**. I think I just said that, yes. I am sorry if you disagree.

Mr. **Mazzoli**. Well, the gentleman from Massachusetts is recognized for more positive statements.

Mr. **Frank**. Thank you. Now that I have been set up, Mr. Chairman, I think what Ms. Martinez meant is not that the comments were not positive and worthwhile in terms of a solution, but talking positively about the kinds of people who were coming over and their work efforts.

Let me ask Ms. Simmons, if I could, to expand a little bit on the Haitians, because I agree with you that the record of the country in this regard has been discriminatory and I think it is discriminatory actions taken in cases like that that does lead to the kind of fears that are there, although I hope that we will ultimately be able to resolve them legislatively.

What is it you would like to see Congress do with regard to the Haitians?

Ms. **Simmons**. I would like to see the Congress treat the Haitian refugees in the same manner that they treat the European refugees and other refugees, that they would not make the kind of distinction as they made last summer when we were trying to get the boat people off the boats, that these people are fleeing from economic sanctions, that they are not political refugees. And as I probed, as I indicated, with State Department officials, when we kept talking he could not tell me the difference where the Haitians were concerned, the boat people, and the refugees who were coming over from Cuba.

Mr. **Frank**. Well, now we know. One is authoritarian and the other is totalitarian. I do not think that that makes much difference when you are on the refugee end.

Ms. **Simmons**. That is right, because we felt sure, based on the information we had, that if those persons went back to Haiti that they would suffer politically. We felt that it was not just economic. And since we cannot seem to ascertain from official sources how they make the distinctions, then we think there is discrimination based on color.

Mr. **Frank**. I appreciate that and I agree with you. I think that race prejudice was a factor in that decision, perhaps not a conscious one, but clearly something that was there. I think that does contribute to the kind of fears we have had, although I would say to Ms. Martinez, I think this is a case where a lot of people who are well intentioned are trying to work together.

And I understand the fear that you bring to this, because I guess part of it is—well, you say identity cards are going to be universal, but we know you only mean to use them for Mexicans. I think that might be a mistake.

One of the advantages with the identity card has to do with the underground economy. We know more and more now that there are people who are working, of all ethnic groups and all sectors of the country, who are getting paid under the table and out the window and there is no record of it. One of the advantages of a universal social security or other kind of identifier involved in jobs would be in fact to improve tax collection and to improve some other things.

So I would not assume that the only possible purpose of the card is in fact to keep out people from Mexico. I think it is very possible that there are a lot of public purposes, legitimate public purposes, that could be accomplished. And I think that might help allay some of the fears if we had a card which in fact there were going to be spotchecks to see whether people running companies all over the country were in fact paying the withholding taxes and the social security taxes.

If this were used also to kind of combat the erosion of voluntary tax payment, would that allay your fear somewhat, if it was an overall program of enforcement like that?

Ms. **Martinez**. Not particularly. I guess I know about too many overall programs of enforcement that have failed.

The other fear that I have, Mr. Frank, is that even if we did the best job we could, an almost nondiscriminatory job of it, the human demographic pressure for people to come here is so great that people will continue to come, and that in fact this labor market will go further underground.

Mr. **Frank**. Let me ask you with regard to that. I share your objection to the guest worker program. It seems to me to say that people are good enough to work for us, but not good enough to live with us. Would you expand on your opposition to that?

Ms. **Martinez**. My view is that if we need people to work here—and of course the economists are predicting that by the end of the eighties we will need workers—then I submit that people good enough to come and work here ought to be good enough to come here as real people, as you called them yesterday, with permanent resident alien status on a track toward citizenship.

Mr. **Frank**. I will yield back for someone else to say something positive.

Mr. **Mazzoli**. The gentleman's time has expired.

The gentleman from California has just joined us. I do not know whether he would be prepared to ask questions. The gentleman is recognized for 5 minutes.

Mr. **Lungren**. Now, I looked through some of this material before your testimony. So I would like to address one of my questions to Ms. Martinez. With respect to the question that I gather we have been talking about a little bit ago, on the guest worker bill, I was intrigued by some of your testimony which suggested that employer sanctions would not stop, if that is the word you want to use, the migration of some Mexican nationals.

Ms. **Martinez**. Or others.

Mr. **Lungren**. Or others, right. But my guestworker bill would specifically deal with Mexico as a first step. But its likely employer sanctions would not stop them from coming to this country and seeking employment, albeit illegal employment. And that being the case, I am somewhat intrigued about why you would still not support a guest worker bill, if there are people that are going to be coming here under some sort of illegal status, unless you accept as an assumption that by their mere presence here they would automatically be granted illegal status.

Ms. **Martinez**. I was responding a little bit to that pursuant to Mr. Frank's questions, and what I was suggesting was this: that if we need people here to work, that then we ought to accept them as full-fledged people, as permanent resident aliens, members of our country, full-fledged members, and on a 5-year track toward citizenship.

That is my belief, because otherwise my worry is that a guest—a Mexican American citizen fighting for first class citizen recognition, continuing this fight is going to be labeled a guest worker. All United States-Mexican American citizens will be perceived as guest workers, and that is why I look at my alternatives.

I am an attorney and I see that this country does have a permanent resident alien program. Then I submit that we should first exhaust that possibility before we look at anything as potentially pernicious as the guest worker program.

If you look at the old bracero program that this would probably be patterned after, one would not take much comfort from that. If you look at the European experiment, I take less comfort from that guest worker program.

Mr. LUNGREN. My question is this: Are you saying that somehow we can stop all the illegal influx, from whatever country, so that for a period of time we can see how the various programs work? Or are you saying that anyone who comes into this country, because they have an economic concern, ought to be allowed in and allowed to work?

Ms. MARTINEZ. I start from the premise that we have a right to regulate immigration. And I am saying if we need people to work then we should let them come in as permanent resident aliens, not as guestworkers or braceros.

Mr. LUNGREN. If we establish a permanent resident alien program for them to come in and we establish some numbers and we have an employer sanction law, you also suggest that all of those things will not stop some illegal migration. My question is what do you do with the illegal migration?

Ms. MARTINEZ. I think I suggested earlier that there are other solutions in a broader framework, and those have to do with helping Mexico and other sending countries help themselves, help them vitalize their economies and create more opportunities there. We might be able to accomplish a lot through foreign trade policies. We do not have to look at the issue only as an immigration issue. In fact, I think we would be less than constructive if we did so.

Mr. LUNGREN. I understand. But I am trying to sort some things out. I believe we ought to work with Mexico and other countries to assist in their economic development. But I think I would be somewhat of a Pollyanna to suggest that somehow that is going to come to pass within the next 20 or 30 years.

If you look at the average age, I believe in Mexico now it is 15 years or less. If you look at the birth rate, it is continuing upward. And unless we are going to have the greatest miracle in the history of economic development in that country, I think we are still going to have numbers of them coming over.

And I noticed in your presentation you cited Wayne Cornelius' study for the support of some of your positions. And after analyzing some of these facts, he has come out in support of a guestworker program.

I just do not know. If we are going to continue to have some people here illegally, at least that tends to make me believe that

that stigma is far worse with respect to the Hispanic community than the stigma of someone who is here legally under a guestworker status.

It seems to me that if we ignore the fact that unless we have some sort of mechanism to bring numbers here to allow them to work for short periods of time—and there are large numbers who want to come here for short periods of time to work—that you are going to have a situation where they are here illegally, and that stigma to me is far greater than the stigma of a guestworker who is here legally.

Many of the problems that we have right now step from the fact that the person's status is an illegal status. They are subject to unscrupulous employers. They are afraid to report crimes for fear of being identified as being here illegally. And that, it seems to me, attaches a stigma to them that they do not otherwise have.

People will say, generally speaking—they will talk about illegals, but you ask them about individuals they have come into contact with who are not here legally, and they have the greatest things to say about these people. They separate the individual they know from the question of illegal status.

And I would just like to see us work on that. I guess we are both arguing from the same premise and coming to a different conclusion.

Mr. MAZZOLI. I thank the gentleman very much.

Mr. Kee, you have been fortunate. Maybe we ought to give you 2 or 3 minutes, because no one has jumped on you. Do you have something you maybe want to jump on us about?

Mr. KEE. I am very fortunate to have a hard-working staff and resource people behind me who had worked on this position paper, and they reminded me that there is one very important issue that is stated in our position paper that was not covered at all by the Select Commission. And that is the issue of the Filipino war veterans who served with the U.S. Armed Forces in World War II and because of certain deficiencies by the Immigration Service in processing them they were precluded from becoming U.S. citizens.

Now, Congressman Akaka has submitted to the Congress H.R. 1001, and we would like to tell you that we wholeheartedly support this bill.

Mr. MAZZOLI. Thank you very much. I will talk with him about that.

And thank you, panelists, very, very much. We appreciate your attendance and your help.

It is now our privilege to call forward the next group of panelists: Mr. David Carliner of the American Bar Association; Mr. Stanley Mailman of the Association of Immigration and Nationality Lawyers; Mr. John Shattuck, who has been with us many times, director of the American Civil Liberties Union; and Mr. Michael Semler of the Migrant Legal Action Program.

Gentlemen, I understand that Mr. Shattuck has a time constraint. Would it be acceptable if he proceeds? Would that be OK with all of you?

Mr. Shattuck, please feel free to proceed.

STATEMENT OF JOHN SHATTUCK, LEGISLATIVE DIRECTOR, AMERICAN CIVIL LIBERTIES UNION

Mr. SHATTUCK. I appreciate that very much, Mr. Chairman and my fellow panelists.

The American Civil Liberties Union is very pleased to appear on this extraordinarily important issue. The Commission that has studied the issue of immigration and refugee policy has undertaken a monumental policy formulating task and it has reached a number of important conclusions concerning the control of immigration in the United States. It has also made several recommendations which we believe pose dangers to the civil liberties of Americans.

I would like to focus my remarks on the recommendations which we believe are most significant, first turning to several which we strongly and heartily endorse.

We are pleased that the Commission has endorsed the Refugee Act of 1980, which defined refugees on the basis of persecution or fear of persecution, without regard to national origin. In keeping with the spirit of the act, the Commission recommends that the U.S. allocation of refugee numbers include both geographic considerations and specific refugee characteristics, and that in the course of allocation specific numbers be provided for political prisoners, victims of tortures, and persons under the threat of death, regardless of their geographic origin.

This is the cornerstone of our current enlightened refugee policy and it should be continued, as the Commission recommends.

We are also pleased that the Commission has recommended to legalize certain categories of undocumented aliens now in the United States based on, again, nondiscriminatory criteria.

We believe that the Commission's recommendations to create a new immigration court under article I of the Constitution is a valuable proposal to upgrade the quality of immigration justice. The Commission also recommended that the right to counsel and notification of that right be mandated at the time of any hearing, and we strongly endorse this recommendation as a major step toward eliminating the procedural and administrative chaos that characterizes all too many immigration cases today.

I would like to turn now to several recommendations of the Commission about which the ACLU has some misgivings. In doing so, I certainly do not underestimate the complexity of the issue, nor do I mean to detract from the endorsements that we have just made of a substantial part of the Commission's work, or in other areas in which the Commission has made recommendations which we consider to be important, which we either endorse or do not oppose.

We do, however, oppose the Commission's recommendations for the imposition of sanctions upon employers who hire undocumented workers and the creation of an accompanying system of more secure—and I stress that because it is very important to our testimony—more secure national identification for employment purposes, because of the serious dangers this would pose to civil rights and civil liberties inside the United States.

With respect to employer sanctions, which I will not address at any length, we believe that the penalties imposed on employers who hire persons illegally in the United States could exacerbate existing patterns of racial and ethnic discrimination in employment by creating disincentives for employers to hire racial or ethnic minorities who might be illegal aliens.

Before setting forth our objections to a new more secure form of worker identification, I would like to endorse one further aspect of the Commission's recommendations with respect to an enforcement scheme as an alternative to employer sanctions and more secure identification. And that is, of course, that the Commission has urged the increased enforcement of existing wage and working standards legislation and supports the necessary increases in budget, equipment, and personnel that will allow the Department of Labor's Employment Standards Administration to increase its efforts to monitor the workplace.

This would impose on the employer the cost which the employer now may seek to avoid by violating the labor and working standards laws and hiring illegal aliens who are willing to work in substandard conditions. This kind of stepped up enforcement may not be the total solution to the problem which the Commission has addressed, but it certainly could curtail the employment of illegal aliens without jeopardizing at the same time the rights of Americans.

The additional enforcement program, endorsed by a bare one-vote majority of the Commission, depends on the development of a more secure identification system. Many who favor a new system of compulsory worker identification argue that it would be effective because the technology now exists for the creation of a tamper-proof social security card.

The transformation of the social security card into a more secure means of identification as a prerequisite for employment would bring us, in our view, perilously close to the adoption of an internal passport in this country, which is not now known to Americans and which we think is anathema to their system of freedom.

While it is argued that such a system would be no more than is presently required, in several key respects it would be fundamentally different. The social security number is now merely an identifier for counting and crediting contributions to the social security system. The employer does not view either the number or the card on which it is printed as having any further meaning. The number is often not given to the employer until after the person has been hired, nor is the card itself necessarily shown. And it is not a legal precondition to employment.

Attempts to make the new identification system more secure would increase both its civil liberties and its economic costs. The Commission staff, of course, has studied extensively the costs of such a system and I will not repeat to you the figures, which are well known to those who have studied the Commission's report, the figures with respect to the implementation of that system.

On the other hand, the development of such a system would provide the government with a potentially powerful weapon of intimidation. The utility of a work identity card would be its required presentation upon official request. Creating a new card system——

Mr. **Mazzoli.** Mr. Shattuck, I am sorry to bother you and I apologize for interrupting you and the other witnesses. But we did try to limit testimony to about 5 minutes in order that we could then have some questions. And we are getting toward the end.

Mr. **Shattuck.** I am very nearly completed, Mr. Chairman. I just wanted to make a couple more points.

Mr. **Mazzoli.** Thank you very much.

Mr. **Shattuck.** It would be likely that a variety of government officials, not involved in the administration of social security programs or employment programs, would demand inspection of that document and thus provide the potential for broad and discriminatory administrative searches.

This is at the core of the basis for our objection. Needless to say, there are other forms of identification that exist now that would not involve the kind of card-carrying universal identification document, which is what we are most concerned about and which the Privacy Protection Study Commission was concerned about, which the Department of HEW Advisory Committee on Automated Data Systems was concerned about.

But any system that involves a more secure form of work identification, particularly if it involves a card which can be asked for and be the subject of an administrative search and a search of people who might happen to look foreign or be racial minorities, would in our view amount to a fundamental intrusion on the privacy of Americans and an invitation to discriminate.

So in our view, what happens here when this more secure identification system is proposed is that one problem is substituted for an even more serious problem, and for that reason we reluctantly oppose the more secure identification system.

Mr. **Mazzoli.** Thank you, Mr. Shattuck. And again, I apologize for having to hurry you along. Your statement, of course, and the statements of all the gentlemen will be made a part of the record.

We have to go on to the other panelists. If you have to leave before we get to the questions, we may be sending you some questions in the mail.

Mr. **Shattuck.** I appreciate that.

[The prepared statement of Mr. Shattuck follows:]

PREPARED STATEMENT OF JOHN SHATTUCK

The American Civil Liberties Union is grateful for this opportunity to state our views on the recommendations of the Select Commission on Immigration and Refugee Policy. The ACLU is a national nonprofit organization of more than 200,000 members devoted to defending and enforcing the Bill of Rights to the Constitution.

The Commission has undertaken a monumental policy-formulating task in an area of extraordinary importance, complexity and sensitivity. Immigration and refugee issues involve fundamental problems of human rights and liberties, questions of economics and foreign policy, and a host of other matters basic to our society. The formulation of immigration policy is fraught with competing concerns and requires many difficult choices. The Commission recognized these difficulties and nevertheless reached a number of important and sound conclusions concerning the control of immigration to the United States. It also made several recommendations which we believe pose serious dangers to the civil liberties of Americans. I would like to focus my remarks on the recommendations which we believe are most significant, turning first to several of those which we endorse.

Asylum

The ACLU has long taken the position that "the right of asylum should be made available to persons who are in danger of persecution for reasons of political beliefs, religious persuasion or ethnic, national or racial origins." ACLU Policy # 323 on Immigration and Nationalization (attached). By endorsing the Refugee Act of 1980, which defined refugees on the basis of persecution or fear of persecution without regard to national origin, the Commission Report reflects the concern for human rights that should underlie a sound policy on asylum. In keeping with the spirit of the Refugee Act, the Commission recommends that "the U.S. allocation of refugee members include both geographic considerations and specific refugee characteristics, . . . [and] that in the course of allocation, specific members be provided for political prisoners, victims of torture and persons under the threat of death, regardless of their geographic origin." Commission Report, p. 164. This is a cornerstone of our current, enlightened refugee policy, and it should be continued, as the Commission recommends.

Legalization

The ACLU is of the firm view that "where relief is afforded from deportation by reasons of hardship or other factors, such benefits should be granted without discrimination to persons from any country and to persons regardless of their occupation or method of admission to the U.S." ACLU Policy #329 on Deportation. The Commission's recommendation to legalize certain categories of undocumented aliens now in the United States, based on nondiscriminatory criteria, is entirely consistent with this position, and we endorse it.

Due Process

The current structure of deportation and exclusion proceedings is complicated, confusing and burdensome. Forty immigration judges in the Immigration and Naturalization Service hear and decide approximately 56,000 deportation and 3,000 exclusion cases annually. The system is not working well, and it affords little due process. The Commission's recommendation to create a new immigration court under Article I of the Constitution is a laudable proposal to upgrade the quality of immigration justice. The proposed Article I court would include a trial division to hear and decide exclusion and deportation cases and an appellate division to correct hearing errors. The Commission also recommends "that the right to counsel and ratification of that right be mandated at the time of any hearing." We strongly endorse this recommendation as a major step toward eliminating the procedural and administrative chaos that characterizes too many immigration cases.

Enforcement

I would like to turn now to several recommendations of the Commission about which the ACLU has misgivings. In doing so I do not mean to downgrade the importance of the areas briefly described above--and other areas which time constraints do not permit me to treat here--where we endorse or do not oppose the Commission's recommendations.

We oppose the Commission's recommendations for the imposition of sanctions upon employers who hire undocumented workers and the creation of an accompanying system of "more secure" national identification for employment purposes because of the serious dangers they pose to civil rights and civil liberties. With respect to employer sanctions, we believe that penalties imposed on employers who hire persons illegally in the United States would exacerbate existing patterns of racial and ethnic discrimination in employment, by creating disincentives for employers to hire racial or ethnic minorities who might be illegal aliens. ACLU Policy #327 on Employment of Undocumented Aliens.

It is argued that the danger that employer sanctions will promote employment discrimination can be minimized by the development of an objective and accurate means of identifying illegal aliens. Unfortunately, neither the Commission nor any other responsible policy-formulating agency has been able to devise an objective and accurate means of identifying illegal aliens in the national work force without also seriously eroding the civil liberties of the entire work force. For reasons I will explain in detail, we find ourselves in substantial agreement with the seven commissioners who "find the creation of any new form of work identification unnecessary, costly and/or potentially harmful to civil liberties."1/

Before setting forth in detail our objections to a new, more secure form of work identification, I would like to endorse one of the Commission's other enforcement recommendations as an alternative to employer sanctions and more secure identification. The Commission "urges the increased enforcement of existing wage and working standards legislation. . .[and] supports the necessary increases in budget, equipment and personnel that will allow the Department of Labor's Employment Standards Administration. . . to increase its efforts to monitor the workplace." Commission Report, II. B.2, at 70-71.

1/ Commission Report, II. B.1, at 68. The Commission vote on the question, "Do you favor employer sanctions with some system of more secure identification?" was as follows: Yes-8; No-7; Pass-1. Id. at 61.

The Employment Standards Administration (ESA) is empowered by statute to restore back wages to persons who were paid below the federal minimum wage. Under the ESA program investigations are conducted against employers thought to be using undocumented workers. The objective of these investigations is to make low wage employers aware that the minimum wage law is being enforced, and that it is being enforced with particular diligence on those known, or reasonably believed to be employing illegal aliens. Since such enforcement will impose on the employer the costs which he seeks to avoid by violation of the labor and working standards laws, his incentive to hire undocumented workers will be significantly reduced. Such an enforcement system would be more cost-effective than implementing employer sanctions and a work identification system, since it would be cheaper to use agencies already in place than to institute an entirely new and expensive system. More importantly, however, the increased enforcement of present wage and safety laws would not involve the widespread discriminatory impact and civil liberties erosion that appears to be inherent in an employer sanctions program coupled with a national work identification system.

National Work Identification System

The enforcement program endorsed by a bare one-vote majority of the Commission depends on the development of a "more secure identification system" for placing employers on notice about the illegality of hiring undocumented workers. In our view, such a system would impinge severely on the civil liberties of all workers and, in any event, would be very costly but not effective.

Our views on this important issue are similar to those of the U.S. Commission on Civil Rights, whose report, The Tarnished Golden Door: Civil Rights Issues in Immigration (1980), at 70-75, is similar to the following analysis.

Those in favor of a new system of compulsory work identification argue that it would be effective because the technology exists for the creation of a tamperproof social security card.

The transformation of the Social Security card into a "more secure" means of identification and prerequisite for employment would bring us perilously close to the adoption of an internal passport. Despite disclaimers by its proponents of any such intention, a document of personal identification whose disclosure is required before employment can legally be obtained is in fact, if not in name, a domestic passport. To thwart attempts at forgery, the card would have to carry such unique personal identifiers as photograph, signature, and perhaps also fingerprints. It would also have to carry codings to show the bearer's legal authority to work. It would thus become an "employment passport." Employers would be forced to serve as agents of the government for the purpose of determining each applicant's identity and legal right to work.

It is argued that a "more secure" identification system would be no more than is presently required, in that workers must now give their Social Security numbers to their employers. But the process would be fundamentally different. The number is now merely an identifier for counting and crediting contributions to the Social Security system. The employer does not view either the number or the card on which it is printed as having any further meaning. The number is often not even given to the employer until after the person has been hired, nor is the card itself necessarily shown. Neither the possession of a Social Security number nor the disclosure of the number is a legal precondition to employment.

Attempts to make the new identification system "more secure" would increase both its civil liberties and its economic costs. In 1973 the Department of Health, Education and Welfare concluded in a study evaluating the use of a standard universal identifier (SUI) that "the bureaucratic apparatus needed to assign and administer an SUI would represent another imposition of government control on an already heavily burdened citizenry."[2/] The necessity of preparing a more secure identification for every lawful resident of the United States (or even every lawful member of the national work force), and of maintaining a central, computerized databank of information to verify the identity and status of every authorized worker, would make the system both expensive and burdensome. A study by the Commission staff evaluating the expense of establishing even a relatively modest secure work identification system estimated that such a program, based conservatively on 15 million applications in the first year and 10 million annual additions and deletions in the central data bank files, would entail nearly

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2/ U.S., Department of Health, Education and Welfare (now Health and Human Services), Secretary's Advisory Committee on an Automated Personal Data Systems, Records, Computers, and the Rights of Citizens (July 1973), p. 111 (hereinafter HEW Report).

$100 million "in start-up costs" and $180 to $230 million annually for operating costs.

The burdens created by a secure work identification system are not limited to the creation of information files on individual Americans or the types and amount of data collected by the federal government. There are also problems with respect to who has access to the data and how it is used. Although the institution of a compulsory national identity system raises serious questions as to the potential access of employers to information which would be contained in an individual's file, the more obvious and greater concern would be the improper use of information collected by the government agency. As Commissioner Holtzman pointed out in her dissent from the Commission's recommendation of a "more secure" identification card:

> Regardless of the legislative intent, I do not believe it is reasonable to assume that the use of such a card could be limited to the place of employment. Like a driver's license or a social security card, individuals would soon find a national identity card would be utilized for purposes unrelated to the original purpose for which it was created, by organizations and agencies with no connection to the workplace.

Commission Report, Appendix B, at p. 343.

This would not be a new problem for government data gathering. In enacting the Privacy Act of 1974, Congress was reacting to the

> illegal, unwise, overbroad investigation and record surveillance of law-abiding citizens produced in recent years from actions of some over-zealous investigators, and the curiousity of some government administrators, or the wrongful disclosure and use, in some cases, of personal files held by Federal agencies. 3/

3/ S. Rep. No. 93-1183, 93d Cong., 2d Sess. 1 (1974).

The heightened concern of Americans over governmental intrusions into the right to privacy of individuals is reflected in decisions of the Supreme Court over the last decade. The Court has recognized that a right to privacy does exist.[4/] Although "[t]he Constitution does not explicity mention any right of privacy," the Court has stated that it flows from the zones of privacy created by many constitutional guarantees. In an earlier era, Justice Louis Brandeis referred to this right as "the right to be left alone--the most comprehensive of rights and the right most valued by civilized men" and stated:[5/]

> Experience should teach us to be most on our guard to protect liberty when the Government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding. 6/

The development and implementation of a compulsory national work identification system would provide law enforcement officials and other governmental officials with a potentially "powerful weapon of intimidation" which could result from "the mere threat of official confiscation."[7/] The utility of a standard universal identifier or a compulsory national identity card would be in its presentation upon official request. Creating a compulsory national

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4/ Carey v. Population Services Intl. 431 U.S. 678, 684 (1977); Roe v. Wade, 410 U.S. 113, 152 (1973); Griswold v. Connecticut, 381 U.S. 479, 484-85 (1965).

5/ Olmstead v. United States, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting).

6/ Id. at 479.

7/ HEW Report, p. 111.

identity card system or elevating the social security card to the status of a national identifier would make it all the more likely that a variety of governmental officials (not involved in the administration of social security programs or employment program) would demand inspection of that document and thus provide the potential for violations of individual rights.

In enforcing the sanctions against employers who hire undocumented workers, immigration officials would regard the existence of a work identification system as an invitation to conduct dragnet searches of places frequented by foreigners or those who look foreign. The resulting invasion of privacy and discriminatory focus on those who are "foreign-looking" would be severe. See attached memorandum for relevant legal precedents.

These dangers have been repeatedly noted in recent official studies. In its 1977 report, the Privacy Protection Study Commission, established by the Congress, treated these fundamental issues at length. In a chapter on the social security number, the Commission concluded:

> That the Federal Government not consider taking any action that would foster the development of a standard, universal label for individuals, or a central population register, until such time as significant steps have been taken to implement safeguards and policies regarding permissible uses and disclosures of records about individuals in the spirit of those recommended by the [Privacy Protection Study] Commission and those safeguards and policies have been demonstrated to be effective. 8/

8/ Privacy Protection Study Commission, Personal Privacy in an Information Society (1977), p. 617.

Other recent studies have reached similar conclusions. The Federal Advisory Committee on False Identification opposed the development of a national identity card in its 1976 report. The 1973 HEW study cited above also opposed the use of the social security card as a standard universal identifier.[9/] In that study, the Secretary's Advisory Committee on Automated Personal Data Systems noted:

> The national population register that an SUI implies could serve as the skeleton for a national dossier system to maintain information on every citizen [and resident] from cradle to grave. 10/

The HEW study further stated that this type of information gathering is at odds with American traditions:

> A permanent SUI issued at birth could create an incentive for institutions to pool or link their records, thereby making it possible to bring a lifetime of information to bear on any decision about a given individual. American culture is rich in the belief that an individual can pull up stakes and make a fresh start, but a universally identified [person] might become a prisoner of his recorded past. 11/

The great potential for infringement of privacy rights and the impact this could have on the infringement of other rights strongly suggests that the proposal for "more secure" work "identifiers", if adopted, would merely exchange one problem for a different and more serious problem.

9/ HEW Report, p. 112.

10/ Ibid., p. 111. Similar concerns were expressed by the Privacy Protection Study Commission on p. 618 of its report.

11/ HEW Report, pp. 111-12.

In introducing the bill which eventually became the Privacy Act of 1974, former Senator Sam J. Ervin, Jr., offered an eloquent statement about the dangers of proliferating systems of government collection of personal data.

> there must be limits upon what the Government can know about each of its citizens. Each time we give up a bit of information about ourselves to the Government, we give up some of our freedom. For the more the Government or any institution knows about us, the more power it has over us. When the Government knows all of our secrets, we stand naked before official power. Stripped of our privacy, we lose our rights and privileges. The Bill of Rights then becomes just so many words. 12/

In conclusion, we oppose the employer sanctions model of enforcement proposed by the Commission because it would be impossible to administer in a non-discriminatory manner, even if a more secure form of work identification could be devised. Whether or not such a system is based on a national identity card, potential problems of discrimination would remain. As Commissioner Holtzman succinctly stated, "clearly, employers wishing to avoid additional paperwork or possible disruption of their business through civil or criminal penalties would simply refuse to hire anyone who conceivably might be an undocumented alien. Given the meager resources currently allocated to the enforcement of equal opportunity statutes, I do not believe the threat of a discrimination action is sufficient to deter such conduct." Commission Report, Appendix B, at p. 344. We agree. A system which would encourage employment discrimination while jeopardizing the civil liberties of the entire work force is not worth the substantial cost of putting it into place.

Thank you for this opportunity to state our views.

12/ 120 Cong. Rec. 12646 (1974) (remarks of Sen. Ervin).

Immigration and Naturalization

Policy #323

Admission of Immigrants

Whatever method Congress may choose to select immigrants for admission to the United States, ancestry, color, nationality (whether defined in terms of a nation, colony or dependency) sex, religion or race should not be the basis for exclusion. The ACLU favors elimination from the existing immigration laws of all vestigial remains of the now-repealed national origins quota system, including the maintenance of subquotas for colonies and dependent areas of foreign states.

Aliens should not be barred from admission to the United States as permanent residents upon grounds relating to their beliefs or advocacy of any ideas, including political doctrine.

Aliens should not be barred from admission to the United States as permanent residents upon grounds which are vague or subject to the arbitrary exercise of discretion.

Aliens should not be barred from admission to the United States as permanent residents upon grounds not reasonably related to any proper governmental concern.[1]

The historic tradition of asylum should be established as a settled tenet of American immigration policy. The right of asylum should be made available to persons who are in danger of persecution for reasons of political beliefs, religious persuasion or ethnic, national or racial origins.[2]

Any alien outside the United States who is denied a visa, or refused admission to the United States as an immigrant should have the right to an adjudicatory proceeding, which shall include the right of representation, to present evidence, to examine and to object to evidence against the applicant, a written record of the proceedings, and the decision by the adjudicating officer based upon the evidence in the record.

Any alien who is denied a visa by the adjudicating officer in an administrative proceeding shall be entitled to the same rights of judicial review as is enjoyed by aliens within the United States. [Board Minutes, June 18-19, 1977.]

Policy #324

Admission of Non-Immigrants

Aliens who are otherwise eligible to obtain visitors' visas should not be barred from admission to the United States because of their ancestry, color, nationality, sex, religion, race, or sexual or affectional preference, upon grounds relating to their beliefs or advocacy of any ideas, including political doctrine, or upon grounds which are vague or which are subject to the arbitrary exercise of discretion. Nor should the grant or maintenance of non-immigrant status by students, business visitors, visitors for pleasure or any other non-immigrants be denied by reason of the exercise of the constitutional right of free speech or association or membership in any party, or conditioned upon the limitation of the right to travel within the United States.

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[1] For instance, ACLU policy on Homosexuality makes the following specific reference to aliens:

"Just as governmental discrimination by race, alienage, religion or sex is a denial of equal protection, so, too, is governmental discrimination on the basis of sexual or affectional preference. Homosexuality per se implies no disability that would justify such discrimination. The ACLU opposes the exclusion, deportation and refusal to naturalize homosexual aliens."

[2] ACLU policy on ACLU's Role in International Civil Liberties Matters includes the following support of the right of political asylum:

"The ACLU will aid persons from foreign lands to secure political asylum in the United States when these persons seek refuge from persecution for their political, religious or other beliefs or associations."

This passage is incorporated into our review of ACLU immigration policies because of the interrelationship of immigration and international civil liberties issues.

Aliens who have been denied visas to enter the United States should have the right to have the consular decision reviewed in an administrative proceeding and be entitled to the same right of judicial review which is afforded to other persons who are aggrieved by governmental action. [Board Minutes, September 24-25, 1977.]

Policy #325

Naturalization

The naturalization envisioned by the Constitution is one which, when achieved for the naturalized citizen, places that citizen upon an equal footing with the native born citizen of the United States. As Congress would have no power to impose conditions on the retention of citizenship by naturalized citizens, the conditions which it would impose on the grant of citizenship should be reasonably limited to those requirements which indicate an identity with the people of the United States.

The ACLU opposes any conditions upon the grant of citizenship which would bar persons because of their political beliefs, other than an allegiance to a foreign state, or a standard of conduct which would not debar a natural citizen of the United States from the exercise of his rights of citizenship. Such standards, where applicable, should be applied through a process of judicial inclusion and exclusion, permitting naturalization to be determined through an adjudicatory method reflecting prevailing standards of conduct rather than by rigid legislative definition. [Board Minutes, September 24-25, 1977.]

Policy #326

Loss of Citizenship

An American citizen has the right to expatriate himself or herself voluntarily and to achieve the status of an alien in respect to the United States government. [Board Minutes, August 19, 1968.]

The ACLU believes that Congress should be without power to deprive a native-born or naturalized citizen of the United States of citizenship in the absence of an international and voluntary renunciation of allegiance except in those cases in which a naturalized citizen has acquired citizenship by a willful misrepresentation or concealment of a fact material to his eligibility to citizenship. Any proceeding to denaturalize a naturalized citizen upon such grounds should be subject to a statute of limitations of 10 years.

Where Congress has conferred citizenship at birth to persons born outside of the United States of any parent who is a citizen of the United States, such "statutory citizens at birth" should be afforded the same right to citizenship which is afforded to native-born and to naturalized citizens. Their citizenship should not be divested except upon their intentional and voluntary renunciation of allegiance. [Board Minutes, September 24-25, 1977.]

Aliens

Policy #327

Employment of Undocumented Aliens

The ACLU remains opposed to legislation which penalizes employers for hiring aliens unlawfully in the United States. We believe that such legislation would exacerbate existing patterns of racial and ethnic discrimination in employment, by creating greater risks for employers hiring applicants whom they believe to be aliens. (See also policy on Property Ownership.)

The ACLU also opposes the use of Social Security cards and other governmentally-issued documents as a condition of employment. Such a practice, in effect, creates an "employment passport," which results in a universal identifier of all persons in the United States. [Board Minutes, June 18-19, 1977.]

Policy #328

Detention and Registration

The ACLU opposes the enactment of alien registration laws, which treat the alien population as a separate and quasi-criminal element of society and create an easy avenue for surveillance of those who hold unpopular beliefs. [Board Minutes, July 24, 1939; Minutes of Executive Committee, January 11, 1926; Weekly Bulletin, March 31, 1926.]

The Union did not take a stand against the principle of detention of enemy aliens in this country during World War II, although on numerous occasions it did protest specific injustices in the administration of the program. In 1942, and twice in 1944, however, the ACLU challenged judicially the restriction and detention by military authorities of civilian citizens without any regard for the requirements of due process (pressing of specific charges, proper hearing, etc.) and without any proof of justification by reasons of national security in wartime. The subjects of these detention measures were the victims of blatant racial discrimination because they were not enemy aliens at all, but native-born Americans of Japanese ancestry, and thus were denied equal protection of the law in being singled out for evacuation and resettlement for no apparent reason other than their race. [*Annual Reports* and Board Minutes, 1941-1944; ACLU amicus briefs, *Hirabayashi vs. USA*, 1942, *Korematsu vs. U.S.*, 1944, *Endo vs. Eisenhower*, 1944.]

Policy #329

Deportation

(a) Deportation from the United States is a punishment which cannot be constitutionally imposed upon its citizens. The ACLU believes that it is at all times a denial of due process to inflict upon a lawful permanent resident alien punishment which cannot be imposed upon a citizen of the United States who has engaged in the identical conduct, and it may, in particular circumstances, be cruel and unusual punishment. For persons who have become absorbed into the American community, living and working in the United States as full members of its society deportation cannot be and should not be regarded as the exercise of any "foreign policy" of the United States government.

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(b) Although aliens who have acquired their status as permanent residents by fraud or otherwise illegally may, without offending due process, be subject to deportation, the ACLU favors in this area, as in other offenses against the government, a statute of limitations barring deportation for any fraudulent or illegal entry to the United States which has occurred. Nor does the ACLU believe that deportation should be inflicted upon those under the age of eighteen who may have been admitted to the United States for permanent residence as the result of an illegal or fraudulent act. [Board Minutes, June 18-19, 1977.]

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(c) Where relief is afforded from deportation by reasons of hardship or other factors, such benefits should be granted without discrimination to persons from any country and to persons regardless of their occupation or method of admission to the United States. Neither should any person who has been granted relief from deportation be debarred from any rights or benefits which are otherwise available to persons in the U.S. under the Immigration law and other statutes and the Constitution of the U.S. Nor should any person who is deportable from the United States be deported to a country where he has had no prior residence or to a country where he will be subject to persecution. [Board Minutes, September 24-25, 1977.]

Statement of John Shattuck, Legislative Director, American Civil Liberties Union

CONSTITUTIONAL IMPLICATIONS OF A WORK AUTHORIZATION CARD

This memorandum addresses the legal implications of a work authorization card. Such a document would invite serious invasion of privacy as well as discriminatory use.

The Supreme Court's decisions in *U.S.* v. *Robinson*, 414 U.S. 218 (1973) and its companion case, *Gustafson* v. *Florida*, 414 U.S. 260 (1973) articulate the threat to privacy of a work authorization card. In *Robinson*, an officer arrested the defendant for operating a car with a revoked driver's license; Gustafson was driving without a license. As a result of these "lawful custodial arrests," the Supreme Court held that a "full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a 'reasonable' search under that Amendment." 414 U.S. at 235. The police need not articulate probable cause for a search in such a situation. In other words, law enforcement officials have the right to seriously intrude upon an individual's privacy if that person lacks the documents which show that he or she may engage in certain regulated activities.

Gustafson in particular, provides a disturbing analogy to the possible use of the work authorization card. There, the arresting officer said that he first followed Gustafson because his car was weaving across the road. However, the policeman neither administered a sobriety test nor filed charges of drunken driving. Instead, the officer arrested Gustafson because he could not produce his driver's license. In his consequent search of Gustafson, the officer found a cigarette box containing marijuana. It is interesting to note that the Supreme Court upheld this search as pursuant to a lawful arrest even though no police regulations required the officer to take Gustafson into custody; there were no police department policies requiring full body searches upon arrest in the field; the officer had no fear for his well-being; he had no previous experiences with Gustafson; finally, the charge of driving without possession of an operator's license was later dropped when Gustafson produced a valid license. Nevertheless, the seemingly minor and peaceful offense of not carrying his driver's license subjected Gustafson to a severe violation of his right to privacy.

Obviously, *Gustafson* triggers concern about the use of a work authorization card. In order to enforce the requirement that each American citizen and documented alien carry a card, legislators could easily impose criminal penalties for non-possession at the work-place. The resulting "lawful" arrest would open the door to a thorough search.

Fortunately, the Supreme Court has placed limits on policemen's discretion in stopping or seizing citizens. In *Delaware* v. *Prouse*, 440 U.S. 648 (1979), the Court struck down the legality of random spot checks of drivers' licenses and car registrations. The officer in *Prouse* had not observed any traffic or equipment violations or any suspicious activity by the car's occupants. Further, he was not acting pursuant to any standards, guidelines or procedures pertaining to document spot checks, promulgated either by his department or the State Attorney General. Given the circumstances, Justice White wrote:

"We agree that the States have a vital interest in ensuring that only those qualified to do so are permitted to operate motor vehicles (but) . . . given the alternative mechanisms available, both those in use and those that might be adopted, we are unconvinced that the incremental contribution to highway safety of the random spot check justifies the practice under the Fourth Amendment." 440 U.S. at 659.

Beyond such pragmatic concerns of effectiveness, however, Justice White pointed out that "an individual operating or travelling in an automobile does not lose all reasonable expectation of privacy simply because the automobile and its use are subject to government regulation. Automobile travel is a basic, pervasive and often necessary mode of transportation. . ." id. at 662. Clearly, the Court perceived the right to some degree of privacy in the regulated operation of an automobile, partly because cars are often necessary and widely used.

But *Prouse* is a cautious decision. The Court drew a crucial distinction between random spot checks and stops at the border or checkpoints within the United States where "all are subjected to a show of the police power of the community." id. at 657. In his dissent, Justice Rehnquist accurately pinpointed this disturbing and broad exception to the Fourth Amendment protection of privacy:

"Because motorists, apparently like sheep, are much less likely to be 'frightened' or 'annoyed' when stopped en masse, a highway patrolman needs neither probable cause nor articulable suspicion to stop all motorists on a particular thoroughfare, but he cannot without articulable suspicion stop less than all motorists. The Court thus elevates the adage 'misery loves company' to a novel role in Fourth Amendment jurisprudence." id. at 664.

Thus, *Prouse* carries a variety of implications for the work authorization card. The card will actually serve as a sort of license, authorizing persons to hold jobs in the United States. In order to insure that American citizens or documented aliens fill available American jobs, law enforcement officers may ask an individual to produce his card. Of course, the work-place, like the automobile, harbors a certain right to privacy. But *Prouse* indicates that society's interest in regulating employment and the en masse nature of an inspection could abridge that right. An inspection of all workers' cards in a factory, for example, bears a striking resemblance to the procedure employed at a Border Patrol checkpoint. And the Supreme Court sustained the constitutionality of the Border Patrol's checkpoint operations in *U.S.* v. *Martinez-Fuerte*, 428 U.S. 543 (1976).

The work authorization card also threatens to become a national identity card. If Congress chose to regulate mere presence within the United States' borders by requiring American citizens and documented aliens to carry the card, it is difficult to imagine where an individual could expect a right to privacy. *Prouse*, again, provides little protection.

A more recent Supreme Court case, *Brown* v. *Texas*, 443 U.S. 47 (1979), helps explain the Court's reasoning in *Prouse*. Police approached a man walking through a high drug problem area and asked him to identify himself. They were unable to later articulate why they thought this man looked suspicious. Brown refused to comply with the officers' request, a criminal act under a Texas statute. The Supreme Court ruled Brown's subsequent detention unconstitutional. In doing so, Chief Justice Burger first defined a detention for the purpose of requiring identification as a seizure of the individual's person. Burger observed that although the seizure "involve(d) only a brief detention short of traditional arrest, *Davis* v. *Mississippi*, 394 U.S. 721 (1969); *Terry* v. *Ohio*, 392 U.S. 1, 16–19 (1968), '(w)henever a police officer accosts an individual and restrains his freedom to walk away, he has "seized" that person' [Id. at 16] and the Fourth Amendment requires that the seizure be 'reasonable' *U.S.* v. *Brignoni-Ponce,* 422 U.S. 873, 878 (1975)." id. at——. This definition of "seizure" has since provoked some controversy. In *U.S.* v. *Mendenhall,* —— U.S.——, 64 L. Ed. 2d. 497 (1980), the Court upheld the constitutionality of federal agents' stop and search of a woman in the concourse of an airport. Justices Powell and Rehnquist insisted that the stop and the request for identification was not a seizure because "nothing in the record suggests that the respondent had any objective reason to believe that she was not free to end the conversation in the concourse and proceed on her way." 64 L. Ed. 2d. at 510. The other Justices either rejected this interpretation or assumed that the stop was a seizure, subject to the test of reasonableness under the Fourth Amendment.

In *Brown,* the Chief Justice outlined a three-pronged test for the constitutionality of such seizures. It involved a "weighing of the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty." id. at ——. As a result of these three concerns, the courts generally require that a seizure must be based on either specific, objective facts which trigger society's legitimate interests or a plan which details police conduct. The Court found no facts and no plan supporting the detention of the suspect in *Brown.* Thus lacking a previous "lawful" arrest, totally lacking any articulated reasons for an intrusion and facing a random spot check, the Court chose to reject the legitimacy of the demand for identification in both *Prouse* and *Brown.*

But if law enforcement officers are looking for people who are not authorized to work, what objective criteria can they cite? At this point, the potential for discrimination enters.

The request for documentation cannot be considered apart from the initial stop of an individual. *Brown, Prouse* and *Gustafson* suggest that the validity of the identification check turns on the lawfulness of the stop or seizure. A federal court of appeals in *U.S.* v. *Lincoln,* 494 F.2d 833, 838 (9th Cir., 1974), insisted that "such [a request] is necessarily a part of any law enforcement agency's procedure." And another court stated in *Dell* v. *State of Louisiana,* 468 F.2d 324, 326 (5th Cir., 1972), cert. denied, 411 U.S. 938 (1973), that "the general rule is that a police officer may stop a vehicle and request the production of a driver's license with somewhat less than probable cause as a requisite."

The Supreme Court fashioned a line between a lawful and an unlawful stop based on "reasonable suspicion" in *U.S.* v. *Brignoni-Ponce,* 422 U.S. 873 (1975). More importantly, the Court dealt with appearance as a contributing objective fact. A roving patrol of the Border Patrol stopped a car near the Mexican border and questioned the occupants about their citizenship and immigration status. The officers' sole stated ground for suspicion was that the people in the car appeared to be of Mexican ancestry. The government claimed only the authority to question the occupants about their citizenship and immigration status as a result of their features. Writing for the majority, Justice Powell rejected that simplistic test but did allow officers some leeway:

"Because of the importance of the governmental interest at stake, the minimal intrusion of a brief stop, and the absence of practical alternatives for policing the border, we hold that when an officer's observations lead him reasonably to suspect that a particular vehicle may contain aliens who are illegally in the country, he may stop the car briefly and investigate the circumstances that provoke suspicion." id. at 881.

Permitted factors leading to a stop for identification included: characteristics of the area, proximity to the border, usual traffic patterns, the driver's behavior, attempts to evade officers, erratic driving, the type of vehicle, an unusually heavy load in the car, the number of passengers and a Mexican mode of dress or hairstyle. In addition, Mexican ancestry could be used as one of several clues to illegal alienage.

Similarly, the Fifth Circuit found that "the single factor that the occupants of a car appear to be of Mexican ancestry does not furnish reasonable grounds to stop the car." *U.S.* v. *Del Bosque,* 523 F.2d 1251, (5th Circ., 1975). Indeed, that Court has created a two-part test for stops. Either the vehicle must have been observed crossing the border (the "border nexus" test) or the officers must have reason to suspect illegal activity involving a violation of customs or immigration law (the "reasonable suspicion" test) see *U.S.* v. *Newell,* 506 F.2d 401 (5th Circ., 1975), *U.S.* v. *Diemler,* 498 F.2d 1070 (5th Circ., 1974), *U.S.* v. *Speed,* 497 F.2d 546 (5th Circ., 1974). Nevertheless, brown skin can serve as one element for suspicion.

In *Delaware* v. *Prouse,* 440 U.S. at 659 Justice White claimed that "drivers without licenses are presumably the less safe drivers whose propensities may well exhibit themselves. Absent some empirical data to the contrary, it must be assumed that finding an unlicensed driver among those who commit traffic violations is a much more likely event than finding an unlicensed driver by choosing randomly from the whole universe of drivers." But what similar manifestations will surface for police officers or INS agents as they search for workers without work authorization cards? Appearance, which has been de-emphasized by the courts, could play a key role in the incidence of requests for identification. Much will depend on the weight given "the gravity of the public concern [about illegal aliens employed in the U.S.] . . ., the degree to which the seizure advances the public interest [in deterring such employment] and the severity of the interference with [American citizens' and documented aliens'] individual liberty." *Brown* v. *Texas*, 443 U.S. 47, (1979). How "reasonable" could it become to discriminate against people of Mexican ancestry? Even though the work authorization card would be issued in a non-discriminatory manner and would reputedly reduce discrimination in hiring, the card's likely eventual function as the license proving an individual's right to work invites discrimination. Certainly, officers could point to the type of job, the season, a worker's frightened behavior. But skin color would probably act as the catalyst to these supplementary observations.

Conclusion

This memorandum has been confined to the implications of a document which aims only to regulate employment. Even within that limited context, serious threats to civil liberties arise. As demonstrated earlier, the card could easily be used to legitimize searches and seizures. It could also occasion harassment of racial minorities. For these reasons it should not be adopted.

Mr. **Mazzoli**. Mr. Carliner?

STATEMENT OF DAVID CARLINER, CHAIRMAN, COMMITTEE ON IMMIGRATION AND NATIONALITY, SECTION OF ADMINISTRATIVE LAW, AMERICAN BAR ASSOCIATION

Mr. **Carliner**. Thank you very much, Mr. Chairman.

My name is David Carliner. I appear here on behalf of the American Bar Association at the request of our president, Mr. William Reece Smith, who has written me that he has become aware that immigration policy reform is a matter of paramount national concern. Mr. Smith recently took part in a conference on immigration policy sponsored by the Johnson Foundation in Racine, Wis., where indeed some of you may have participated.

The American Bar Association has some 275,000 members. I would not say that all of them are intimately familiar with immigration matters, but we have almost as many committees within the ABA looking into these issues as Congress does.

I am the chairman of the administrative law section's committee on immigration and nationality. We have an international law section, a criminal justice section, and other sections dealing with labor relations law, and the administration of courts and justice.

The policies which I will speak to today, and which I wish to emphasize are the policies which have been endorsed by the American Bar Association itself. Like the American people, the ABA has some internal differences on some of the issues which I will discuss. However, all of my testimony reflects policy positions adopted by our House of Delegates.

The American Bar Association has followed the course of immigration legislation for at least the last 30 years. During the course of that period, beginning with the enactment of the 1952 statute, the ABA has from time to time suggested various revisions and reforms in the operation of the immigration system. Our focus, being lawyers, is primarily on the administration of justice and not on the larger policy questions, as to which, although we may have opinions, we have no more competence than other American citizens to give views.

As to administrative issues, I will address myself first to one of the issues dealt with by the Select Commission concerning the Federal agency structure. The Select Commission found that there is no need, at this time at least, to have a unification of the administrative agencies. As the committees are aware, of course, the State Department, the Bureau of Consular Services, and the Department of Justice, the Immigration and Naturalization Service, as well a the Department of Labor, the Department of Health and Human Services, and other agencies, all have a hand in some piece of the immigration law policy formation and enforcement.

The American Bar Association feels rather strongly that the time has come to have one agency in the United States administering the immigration laws, and that there should be certainly a merger of the functions of the visa offices with the functions of the Immigration and Naturalization Service. We are not committed as to which agency should house that function. Indeed, it could be an independent agency. It could be within either agency, subject to the discretion of Congress. But the history shows that the work is duplicative, that the issuance of a visa involves many functions which are handled by the Immigration and Naturalization Service and once the issuance of the visa is accomplished, it is examined once again by the Immigration and Naturalization Service. Almost every phase of handling an individual's case has these two separate agencies making determinations. We believe that there is just no justification at all for maintaining a dual structure.

Approximately 20 years ago, there was a National Commission on Security. One of our former presidents, Edward L. Wright, who served on that Commission urged that there be a consolidation of these two agencies. So we commend this particular principle to the committee for its consideration.

One of the major functions within the immigration system, of course, is providing aliens, and not only aliens but citizens who have cases pending before the Immigration and Naturalization Service, an administrative procedure which is one of fair process. We don't suggest at all that there has been a lack of fairness in the process on the whole; the Immigration and Nationality Act provides for a substitute to the Administrative Procedure Act.

We do believe, though, that the immigration judges who are now subordinate in many ways to district directors of the Immigration and Naturalization Service, who are subject to permission to travel, to appropriations and other functions, should be made independent judges in the same manner that the administrative law judges are under the Administrative Procedures Act. This is something which the Commission in its report has also favored.

We also favor establishing the Board of Immigration Appeals as a statutory board. That board was first established in the Department of Justice in 1940 by regulation as a creation of the Attorney General. Its members are appointed by the Attorney General with no terms. They serve at his sufferance. Although I assume there is no likelihood the board will be abolished, it is nevertheless a fact that it exists only under regulation; we believe that the Board should be firmly established by statute.

We also believe that there should be a Board of Visa Appeals. This is more controversial, because some people believe that a

Board of Visa Appeals would encourage aliens all over the United States to go into the U.S. courts to establish what they perceive to be their constitutional and statutory rights. This doesn't necessarily follow. The board could be established to review decisions, with limited access thereafter to the U.S. courts. There is no one in this country who serves in the Government who isn't subject to review by someone, except American consular officials. Their decisions on the issuance of visas are final and not subject to review even by the Secretary of State. We think this is administratively and procedurally a deficient mechanism which could be rectified by the establishment of a Board of Visa Appeals.

There are a number of other proposals enumerated in my statement including, for instance, support for employer sanctions. However, because my time has expired, I ask lease to have my full statement included in the record.

Mr. MAZZOLI. Without objection at all, Mr. Carliner, your full statement will be made a part of the record and we appreciate it very much.

[The prepared statement of Mr. Carliner follows:]

PREPARED STATEMENT OF DAVID CARLINER

Mr. Chairman, and members of both subcommittees:

My name is David Carliner, and I am in the private practice of law here in Washington. I am pleased to appear today on behalf of the American Bar Association, in whose Section of Administrative Law I have the honor of chairing the Committee on Immigration and Nationality.

The American Bar Association welcomes the opportunity to appear before the Senate Subcommittee on Immigration and Refugee Policy and the House Subcommittee on Immigration, Refugees and International Law to review the report and recommendations of the Select Commission on Immigration and Refugee Policy. As the ABA President, Wm. Reece Smith, Jr., recently wrote me, "the subject is one of paramount national concern."

These can be historic hearings.

As members of the Committees know, although the history of the influx of people throughout the world to the United States is a large measure of the history of the United States itself, there have been only two previous major legislative or executive studies of this nation's immigration policies: that of the Joint Commission on Immigration established in 1907 which conducted its studies over a period of four years culminating in a report in 1911 that provided the groundwork for the codification of immigration laws in the Immigration Act of 1917, and the Report of the Senate Committee on the Judiciary in 1950 leading to the enactment of Immigration and Nationality Act of 1952, with a study in the nature of a rejoinder by President Truman's Commission on Immigration and Naturalization in 1952.

The report of the Select Commission on Immigration and Refugee Policy provides an opportunity for this Congress to review the workings of our immigration system against the historical backdrop of one hundred years of legislative enactments. Similarly, the Select Commission's Final Report provides the various interested entities within the ABA with an opportunity to review our past efforts and a focus for our current work.

The role of the American Bar Association in offering its views in these joint hearings currently is more limited than the scope of the Commission's Final Report. As an organization of attorneys, the American Bar Association focuses its major concern here on the administration of justice in formulating and implementing our immigration policy.

It is in this context that at least from the legislative beginnings of the Immigration and Nationality Act of 1952 for a period of more than 30 years, the American Bar Association has continuously studied proposals and made recommendations to improve the operation of our immigration system and to provide for a greater measure of justice for aliens in our society.

Many of the recommendations the American Bar Association has made have found favor with the Select Commission on Immigration and Refugee Policy; some have not.

In this statement, we set forth the specific recommendations made by the American Bar Association during the past 30 years and urge your consideration of them in the context of the Commission's report, and your inclusion of them in legislation you may draft.

I should note here that within the 275,000-member ABA there are, not surprisingly, many divergent views on how this nation's immigration policies ought to be improved, and how legal procedures should be streamlined and made more equitable. Consequently, the policies which I will enumerate, and the current development of new policies, are the product of various groups: my committee in the Section of Administrative Law; the Section of International Law and its counterpart immigration committee; the Section of Criminal Justice; and the immigration committee in the Section of Individual Rights and Responsibilities. I list these interested entities to suggest the breadth of the ABA's viewpoint, and to emphasize that the work done by us over the past three decades undoubtedly will be only the foundation for our current efforts.

What follows is an enumeration of the various pertinent ABA policies accompanied, where appropriate, by excerpts from the background report prepared in support of that policy.

(1) Federal Agency Structure

"Resolved, that it is the opinion of the American Bar Association that the immigration and nationality laws of the United States should be amended to consolidate into the Department of Justice or an independent agency of government the immigration and nationality responsibilities now vested by law separately in the Department of State and in the Attorney General."

"A study of the present dual administration of our law has led the American Bar Association to the following conclusions:

(a) That no sound reason exists for such duplication of responsibility by two independent agencies of government;

(b) That such duplication is wasteful, unnecessary and unjustifiable; and

(c) That it is in our national interest to consolidate into a single government agency the immigration and naturalization responsibilities vested in the Department of State and in the Attorney General." (Board of Governors approved, May 1958. This position has been deleted from current ABA policies because of its age, but still represents the Association's viewpoint)

(2) Structure for Immigration Hearings and Appeals

"Whereas, Compliance with the Administrative Procedure Act (5 U.S.C. 3105, 3344, 5362, 7521, formerly 5 U.S.C. 1010) will insure the independence of Special Inquiry Officers and result in other improvements.

Therefore Be It Resolved, That it is the opinion of the Association that the Immigration and Nationality Laws be amended to provide that Special Inquiry Officers shall be subject to the Administrative Procedure Act (5 U.S.C. 3105, 3344, 5362, 7521, formerly 5 U.S.C. 1010) and that the Section of Administrative Law be authorized and directed to advance appropriate legislation to that end and take such other steps as it deems appropriate to carry out this resolution."

It is the position of the American Bar Association that the Administrative Procedure Act should not be riddled away; that its basic purpose to separate quasi-judicial officers from those who investigate and prosecute and to maintain independent hearing officers should apply with equal force to the Immigration and Naturalization Service as it does to other agencies of our government. (See Statement, American Bar Association, before Joint Hearings of the Subcommittees of the Committees on the Judiciary, 82nd Congress, 1st Sess; S.716, H.R.2379 and H.R.2816; March 20, 1951, pp. 536-537.) The ABA favors the appointment of Hearing Officers subject to the protections and procedures of the Administrative Procedure Act (House of Delegates approved, February 1968).

(3) Board of Immigration Appeals

(A) The American Bar Association favors the creation of statutory status for the Board of Immigration Appeals. The present Board was established by regulation by the Attorney General in 1940 when the Immigration and Naturalization Service was transferred from the Department of Labor to the Department of Justice. The Board is empowered to determine appeals of specified decisions made by delegated officials within the Immigration and Naturalization Service including immigration judges and district directors. Its decisions are subject to review by the Attorney General. The Board is composed of a Chairman and four associate members who serve at the pleasure of the Attorney General. The present basis upon which the Board is established renders its operation and conduct at the sufferance of the Attorney General. Such status obviously affects not only the appearance but the fact of its independence. (House of Delegates approved, February 1958)

(B) Jurisdiction

"WHEREAS, The Board of Immigration Appeals is the judicial arm of the Attorney General in immigration and citizenship matters and whereas there is presently a lack of uniformity in providing for appeals to the Board in all cases involving adjudication;

"BE IT RESOLVED, That the Association is of the opinion that final administrative appeals should lie to the Board of Immigration Appeals from all decisions of district directors, regional commissioners, and special inquiry officers under the Immigration and Nationality Laws; and that the Section of Administrative Law be authorized and directed to advance appropriate legislation to that end and take such steps as it deems appropriate to carry out this resolution." (House of Delegates approved, February 1960)

"BE IT RESOLVED that the American Bar Association recommends that the present system of bifurcated administrative review of immigration determinations is awkward and undesirable, and the Association urges the Attorney General to amend his regulations so that the sole agency authorized to consider administrative appeals from determinations of the Immigration and Naturalization Service would be the Board of Immigration Appeals.

"BE IT FURTHER RESOLVED that the American Bar Association recommends that the Attorney General's regulations be amended to assure to the immigration judges and the Board of Immigration Appeals complete responsibility for exercising discretion and authority in order to assure just and equitable results in the cases they consider. (House of Delegates approved, August 1980)

1. Administrative Appeals. At one time all administrative reviews in immigration cases were considered by the Board of Review, an advisory body established by the Secretary of Labor, when he was charged with administration of the Immigration Laws. When immigration functions were transferred to the Attorney General in 1940, he established the Board of Immigration Appeals, which superseded the Board of Review and was authorized by him to decide rather than to recommend. Since then, the Attorney General has made various enlargements and modifications in the jurisdiction of the Board of Immigration Appeals. See 1 Gordon & Rosenfield, Immigration Law and Procedure, Section 1.10a.

A 1955 reorganization of the Immigration and Naturalization Service established four regional offices. One aspect of this reorganization conferred on the regional commissioners the authority to consider appeals from various decisions of district directors denying various types of applications under the Immigration Laws. 8 C.F.R. 103.1(m). At the same time, the Board of Immigration Appeals, in addition to its traditional power to review deportation and exclusion orders, has retained the authority to review other types of decisions made by district directors. 8 C.F.R. 3.1(b). This divided apparatus for administrative reviews often operates irrationally, e.g., in requiring that appeals from denial of visa petitions for relatives go to the Board of Immigration Appeals, while appeals from denials of visa petitions on the basis of occupational preferences go to the regional commissioners.

We submit that all appeals from immigration determinations should be entrusted to a single appellate body -- the Board of Immigration Appeals. Such a change would end the confusion and irrationality inherent in the present approach. Moreover, in confiding appellate responsibility in an agency which is outside of the Immigration and Naturalization Service, and divorced from its direct enforcement responsibilities, it would provide enhanced assurance of fair and impartial consideration.

2. Authority of immigration judges and Board of Immigration Appeals. Another example of divided responsibility relates to the determinations of the district directors on the one hand and of the immigration judges and the Board of Immigration Appeals on the other. The district directors have authority to consider a wide variety and enormous volume of applications under the immigration laws. Their consideration is informal and usually results in alproval of the applications. The district directors have no power to make adjudications of deportability, which are made in formal, due-process hearings of special inquiry officers (now known as immigration judges), whose decisions may be appèaled to the Board of Immigration Appeals. Sec. 242(b), Immigration and Nationality Act, 8 U.S.C. 1252(b).

Very often, ancillary determinations by district directors may have a bearing on the alien's deportability, e.g., granting applications for asylum, extensions of lawful temporary stay, or permission to depart voluntarily. In 1961 the immigration judges were given authority to consider, in the deportation proceeding, specific types of applications for discretionary relief: voluntary departure, suspension of deportation, registry, adjustment of status, and withholding of deportation because of anticipated persecution. See Foti v. INS, 375 U.S. 217 (1973). However, district directors still retain authority to consider certain of these applications, although their denial of the requested relief does not preclude renewal of the application before an immigration judge de novo in a deportation proceeding. 8 C.F.R. 242.17. But in other situations, the immigration judge and the Board of Immigration Appeals have no authority to review determinations by the district directors which may have a direct effect on deportability, e.g., refusing an extension of temporary stay, a change of nonimmigrant status, or various types of waivers. See 1 Gordon and Rosenfield, Immigration Law & Procedure §§1, 10c, 5.7b.

In our view, the present limitations on the authority of the adjudicating officers are unsound and undesirable. A simple change in the regulations could confer upon immigration judges and the Board of Immigration Appeals all the discretion and authority of the Attorney General which is appropriate and necessary for a just disposition of the cases before them. From the standpoint of the government, such a change is desirable, since it would vest the power of ultimate decision in a single tribunal, subject only to a single judicial review in the United States Court of Appeals. See Kwok v. INS, 392 U.S. 206 (1968).

From the standpoint of the affected party, such a change is equally desirable, since it would enable him to get a full determination of his claims in one proceeding. And we again emphasize the desirability of entrusting final determinations in such matters to administrative tribunals which are divorced from direct enforcement responsibilities.

We therefore recommend that the regulation be amended to assure to the immigration judges and the Board of Immigration Appeals complete responsibility for exercising the Attorney General's discretion and authority in order to assure just and equitable results in the cases they consider.

(4) Board of Visa Appeals

The American Bar Association favors the establishment of a Board of Visa Appeals to review denials of visas by United States consular officers.

Under present law, decisions to grant or to deny visas are vested solely in United States consular officers and are not subject to review by the Secretary of State who otherwise has the responsibility for enforcing and administering immigration and nationality laws and supervising consular officers. The grant of unreviewable administrative authority to subordinates of the Secretary of State is inconsistent with all other governmental structures, including courts as well as administrative agencies. The American Bar Association favors the establishment of a Board of Visa Appeals with the authority to hear appeals from denials of visas by United States consular officers. (Board of Governors approved, October 1955; reaffirmed, May 1973)

(5) Judicial Review of Administrative Orders Excluding Persons Seeking to enter the United States

"The statutory requirement that judicial review may be obtained only by habeas corpus has caused hardship to entry applicants from contiguous countries, since they have been required to surrender into custody in order to bring habeas corpus proceedings. The limitation of judicial review to habeas corpus in such situations serves no useful purpose.

"A person who is excluded from entering the United States has always been able to seek judicial review challenging a final order for his exclusion. The original form of review was by habeas corpus. Chin Yow v. U.S., 208 U.S.

8 (1908). After enactment of the Administrative Procedure Act an additional remedy in the form of declaratory review became available. Brownell V. Shung, 352 U.S. 180 (1956). However, a 1961 statute specified that thereafter review of an exclusion order shall be "by habeas corpus proceedings and not otherwise", Section 106(b), Immigration and Nationality Act, 8 U.S.C. 1105a(b), as amended by Section 5, Act of September 26, 1961, 75 Stat. 653.

"This limitation to habeas corpus has restricted the opportunities for judicial review by unsuccessful entry applicants from contiguous countries, who usually have returned to their homes while their entry applications were being adjudicated. Habeas corpus traditionally has involved some form of custody or restraint. Jones V. Cunningham, 371 U.S. 236 (1963). Consequently, it has been deemed necessary for such unsuccessful entry applicants to surrender into custody in order to support a habeas corpus challenge. Indeed, the regulations expressly sanction surrender to custody for this purpose. 8 C.F.R. 237.2.

"In our view, the need to surrender to custody in such cases in order to provide a jurisdictional basis for judicial review is unnecessary, inconvenient and undesirable. We have therefore recommended that the statute be amended to authorize review of an exclusion order by declaratory judgment as well as by habeas corpus proceedings." (House of Delegates approved, August 1974).

(6) Administration of Labor Certification Program by the Department of Labor

"Be It Resolved, That it is the opinion of the American Bar Association that the following actions should be taken to improve the labor certification program administered by the Department of Labor.

"1. Section 212(a)(14) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(14) should be amended to restore the labor certification requirement to its form before the 1965 statutory amendments, so that this requirement can be imposed by the Secretary of Labor upon a specific finding of need. In the alternative, if the present statutory procedure is retained, the statute should be amended to require the Secretary of Labor to act on labor certification requests within (90) ninety days, in the absence of good cause stated, and to direct the Secretary of Labor to publish regulations setting forth the criteria and procedures followed by him in passing on such requests.

"2. The Department of Labor should improve its facilities for public information and communication in the following respects:

a. The long-delayed issuance of regulations implementing the 1973 recommendations of the Administrative Conference should be published forthwith.

b. The Department of Labor should immediately inaugurate a program, in compliance with the public information requirements of 5 U.S.C. 552, to publish as regulations or otherwise make available to the public all interpretations, policy determinations, and decisions adopted in its administration of the labor certification requirement. The Department of Labor should designate and publish specified decisions as precedents.

c. The Department of Labor should publish or otherwise make available, on a current basis, its internal criteria for adjudicating labor certification requests.

d. The Department of Labor should publish or otherwise make available to the public current information regarding types of labor certification requests granted and types denied.

"3. The Department of Labor should make the following procedural improvements in the labor certification process, in order to assure compliance with the law and with the requirements of due process:

a. No determination to deny a labor certification request should be made before the applicant is informed of the evidence or information on which the proposed denial is predicated and given an opportunity to rebut such evidence or information.

b. In order to promote uniformity and facilitate the correction of errors, the Department of Labor should make provision for centralized review of labor certification denials in appropriate cases.

"4. The Department of Labor should take steps to avoid reliance on inadequate and erroneous procedures in adjudicating labor certification cases, and particularly to follow court decisions in which such errors are indicated. Among such improper procedures are the following:

a. Use of inadequate and unreliable information, such as telephone surveys and computer tabulations of supposedly available workers.

b. Use of unrealistic criteria, ignoring the employer's needs and the alien's specialized skills, resulting in an unsupportable finding that qualified workers are available to fill the open position.

c. Use of excessive geographic criteria of availability, disregarding the statutory directive that qualified workers must be available at the place of intended employment. (House of Delegates approved, August 1976).

"1977 Changes. On January 18, 1977 new regulations were promulgated (42 F.R. 3440) effective February 18, 1977 and now contained in 20 C.F.R. 656 (1978). These regulations made drastic changes in procedures which have prolonged the administrative process with resulting delays of 6 to 12 months instead of the 90 days advocated by our 1976 resolution and report.

Prior to filing an application for a labor certification, it is now necessary to place an advertisement for the position in a newspaper of general circulation. A copy of the advertisement (first phase ad) must be submitted with the application which now must contain in addition:

1. Notice of posting of the job on the employer's premises and
2. A complicated list of 16 assertions incorporating 20 C.F.R. 656.21(b). The regulations require documentation of these 16 assertions.

A job order must be placed with the local state employment service followed by a second phase ad and a waiting period of 30 days. Thereafter the case is sent through the state offices to the regional certifying officer who can certify, require additional information, or issue notice of adverse findings with a 45 day rebuttal period. After rebuttal, the certifying officer will issue or deny a certification. An appeal can be taken within 45 days to an administrative law judge. Rebuttal and appeals must be sent by certified mail.

If certification is denied, the employer is precluded by regulations from filing for the same job for six months (20 C.F.R. 656.29).

On October 27, 1977 the Labor Department published a 150 page Operating Instructions Handbook.

Decisions of the Administrative Law Judges are distributed to the public but none of the decisions of certifying officers or of the Washington, D.C. office of the Department of Labor are ever designated as precedents or distributed. Moreover none of the available material permits the practioner to gain an insight as to the criteria utilized in rendering decisions by the certifying officers.

Criticism of changes and existing practices.

1. There is still great disparity in the handling of cases by the various state agencies and the ten regional certifying offices as to the number and frequency of advertisements, the type of advertisements, the documentation required, and the number of applications to be submitted (most require duplicate copies, some require triplicate and some quadruplicate).

2. Some regions take six months to process a case to notice of findings or certification by the certifying officer, others take up to 12 months. The new procedure is geared to increase paper work and consume time.

3. The certifying officers still do not fully explain denials.

4. Some certifying officers require advertising in professional journals and ethnic newspapers which have little if any circulation in the city of employment - a requirement which is necessary and contrary to Digilab v. Secretary of Labor, 495 F. 2d 323 (1st Cir., 1974); Reddy, Inc. v. U.S. Dept. of Labor, 492 F. 2d 538 (5th Cir., 1974) which only require recruitment in the city of employment.

5. The penalty of six months preclusion from making a new application where there has been a denial is neither justified by practical considerations nor by any legal authority.

6. The printed labor application forms (MA 7-50B) printed in April, 1970 and still utilized and distributed still bear a false legend that an alien who works without authorization will subject his employer to denial of labor certification.

A. Criminal and Economic Sanctions for Employment of Illegal Aliens

"Be It Resolved, That the American Bar Association supports in principle proposed legislation which would apply both criminal and economic sanctions to those knowingly employing illegal aliens, and to that extent endorses in principle Section 2 of H.R.8713 (94th Congress, 1st Session) and its Senate counterpart, Section 12, S.3074 (94th Congress, 2nd Session), to the extent that the penalty provisions, civil or criminal, for the knowing employment of illegal aliens are enhanced and strengthened; and

"Be It Further Resolved, That the American Bar Association supports the proposals in Section 1 of that Bill for enlargement of the statutory remedy for acquisition of permanent residence status, through a procedure known as adjustment of status, by aliens who are in the United States in temporary or irregular status, by making this remedy available to natives of Western Hemisphere countries, but states its opposition to the provisions of this Bill which would deny this remedy to aliens in the United States who entered as crewmen and to those in the United States who have accepted unauthorized employment.

"Be It Further Resolved, That the American Bar Association supports the provisions, in Section 4 of that Bill, granting amnesty from expulsion to certain illegal aliens, but urges that the bill's language should be clarified in order to avoid inequities and favors elimination of its one-year limitation for making applications for this relief.

"Be It Further Resolved, That the American Bar Association urges expansion of the Bill's savings clause so that it will preserve the benefits available under existing law to thousands of persons with pending applications. (House of Delegates approved, August 1976)

B. Forfeiture of Vehicles

"RESOLVED, That the American Bar Association opposes the legislative proposals to revise the November 1978 amendments to Section 274 of the Immigration and Nationality Act of 1952, which provide for the forfeiture of vehicles, vessels or aircraft used in illegal transportation, concealment, harboring, or smuggling of illegal aliens. (House of Delegates approved, February 1980)

Vehicle Seizure Provision

To combat the illegal alien traffic, an amendment to Section 274 of Immigration and Nationality Act of 1952 was enacted in November 1978 to provide for the forfeiture of vehicles, vessels, or aircraft used in the illegal transportation, concealment, harboring, or smuggling of illegal aliens. Pub. L. 95-582, 92 Stat. 2479 (2 Nov 78). The amendment added subsection (b) to the already existing criminal penalty section for these crimes (See APPENDIX A). No such provision previously existed.

Legislative History

The legislative history is sparse. H.R. 12393 was originally designed to add an expansive subpoena provision to the False Claims Act. Congressman Rodino introduced the bill on 26 April 1978, and the Committee Report (H.R. Report 95-1447) makes no reference to the vehicle seizure provision for immigration law. On 18 September 1978 the unmodified bill passed the House, and on 13 October 1978 without report was considered by the Senate. Senator Byrd, acting for Senator DeConcini, offered the amendment without comment or explanation which was then passed. The bill was then discussed in the House which concurred with the Senate amendment.

Department of Justice Proposed Amendments

Assistant Attorney General Patricia Wald, now Circuit Judge, expressed three major concerns about the forfeiture provision: (1) the burden of proving illegal activity before seizure is on the Government, (2) the Government's burden in bearing costs if an innocent owner is invoved, and (3) the satisfaction of lienholders without expense to them. The proposed amendments would bring the immigration provision more in line with the vehicle forfeiture provisions for drug and custom offenses.

Law of Forfeiture

The Supreme Court in Calero - Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663 (1974), describes the effect and impact of forfeiture provisions. A leased yacht was seized without notice or hearing afforded the owner, because the police authorities had reason to believe that there had been marijuana on the ship. The owner was not entitled to notice and hearing prior to the seizure, and the owner's innocence of any involvement in the marijuana activity was irrelevant. The ship, anthropomorphically speaking, had sinned. Ancient law characterized it as deoband (given to God), and it became the property of the sovereign. The Court would not overturn this established precedence that innocence was irrelevant and noted the federal forfeiture provision was similar to Puerto Rico's provision. 416 U.S. 633, 686 n.25. Once the object is forfeited the sovereign may, as a matter of administrative grace, grant remission or mitigation.

Practical Considerations

The existing provision expressly exempts from seizure vehicles of owners or persons in charge who did not consent or act in privy with the illegal act and stolen vehicles. Alien smuggling is most commonly conducted with motor vehicles, and the Government could readily seize those vehicles driven by alien smugglers. The persons being smuggled are ready witnesses against the drivers and lower echelon personnel, but often they do not know who are the large scale operators (i.e. "heavies"). Often the "heavies" will not mkae any claim of ownership for fear of exposing themselves to criminal liability. Many of the cars used for such activities often have questionable registration. The burden of proof is not unreasonable for the Government, but the statutory scheme has been modified by the implementing regulations that place the burden on the owner to show innocence once there is probable cause to seize the vehicle. 8 C.F.R. 274.1(K) and Supplementary Information 44 Fed. Reg. 22704 (17 Apr 79). These regulations do not adequately protect the Congressional exemption from seizure, but the proposed amendments would support these regulations. The scope of Section 274 is broad, and the potential for abuse is great. If a criminal case could not be proved, an individual's auto (i.e. worth $5,000) which may be necessary for his work could be seized by any immigration officer (9 C.F.R. 274.2) for alleged alien smuggling activity. For example, a person gives a hitchhiker a ride who turns out to be an illegal alien. This innocent act would not be the subject of a criminal prosecution, but the person's car could be seized. This person would have the burden of proving in an administrative hearing his innocence, and the cost (especially attorneys fees which are not reimbursed) would be prohibitive.

Cars seized are stored, and in narcotics cases when they are returned the storage charges are excessive. In many cases accessories or parts have been removed, seats or the interior damaged (some believe intentionally).

and the cars themselves subject to abuse. If the owner or lienholder was innocent, then they should be restored to the status quo ante. If immigration officers have a doubt, they should resolve it before they seize the vehicle. Forfeiture proceedings should not be proliferated as a device to penalize without the procedural protections of a criminal proceeding.

(8) Relief From Deportation and Denaturalization

A. STATUTES OF LIMITATION RELATING TO ALIEN DEPORTATION PROCEEDINGS.

RESOLVED, That it is the opinion of the Association that the immigration and nationality laws of the U.S. be amended to provide for a ten-year statute of limitations within which proceedings for deportation must be instituted, except that the statute of limitations shall not apply to proceedings for deportation based upon an admission of, or conviction for, a crime which is not subject to statute of limitation under Section 3281 of Title 18, USC, and that the Section of Administrative Law be authorized and directed to advance appropriate legislation to that end and take such other steps as it deems appropriate to carry out this resolution. (House of Delegates approved, February 1960; reaffirmed, May 1973)

B. STATUTE OF LIMITATIONS ON DENATURALIZATION AND CANCELLATION OF CITIZENSHIP CERTIFICATES

WHEREAS, aliens who have become naturalized American citizens may be subject to judicial proceedings to revoke their naturalization at any time pursuant to 8 U.S.C. 1451; and

WHEREAS, derivative American citizens may have their citizenship certificates cancelled at any time pursuant to 8 U.S.C. 1453; and

WHEREAS, the efficient administration of justice and fairness require debarment of stale claims;

BE IT RESOLVED, That it is the opinion of the Association that the Immigration and Nationality Laws of the United States be amended to provide for a ten-year statute of limitations within which proceedings must be instituted for revocation or cancellation of citizenship certificates, and that the Section of Administrative Law be authorized and directed to advance appropriate legislation to that end and take such other steps as it deems appropriate to carry out this resolution. (House of Delegates approved, February 1968; reaffirmed, May 1975)

C. DISCRETIONARY AUTHORITY OF ATTORNEY GENERAL

Be It Resolved, That the American Bar Association urges that the immigration laws be amended in the following respects:

1. The Attorney General should be given discretionary authority to waive any ground for deportation for the following classes of aliens in the United States:

   a. The spouse, or child of an American citizen or of an alien lawfully admitted to the United States for permanent residence.

   b. An alien who has resided in the United States for at least 3 years.

   c. An alien whose deportation would result in exceptional hardship to himself or to close family members in the United States, in addition to those designated in a above.

   d. An alien whose services or abilities would be beneficial to the United States.

2. The Attorney General should be given discretionary authority to waive any ground for exclusion for the following classes of aliens seeking to enter the United States.

   a. The spouse, parent, or child of an American citizen or of an alien lawfully admitted to the United States for permanent residence.

   b. An alien who has resided in the United States for at least 3 years.

   c. An alien whose deportation would result in exceptional hardship to himself or to close family members in the United States, in addition to those designated in a above.

   d. An alien whose services or abilities would be beneficial to the United States.

   e. Refugees.

   f. An alien excludable for a past offense or condition when at least 3 years have elapsed since the occurrence of the offense or condition.

   g. An alien excludable for criminal misconduct for which a foreign government has issued a pardon or has expunged the conviction.

3. The procedures for exercising the foregoing discretionary authority should be set forth in regulations adopted by the Attorney General and

should be consistent with the nature of the relief sought and the procedures utilized for the consideration of other discretionary authority.

Be It Further Resolved, That the President of the Association or his designee is authorized to present the substance of the foregoing resolution to appropriate committees of the Congress, specifically the Judiciary Committees of the United States Senate and House of Representatives. (House of Delegates approved, August 1975)

D. JUDICIAL RECOMMENDATIONS AGAINST DEPORTATION

Be It Resolved, That the American Bar Association urges that the statutory provisions relating to the deportation of aliens convicted of criminal offenses should be amended in the following aspects:

a. Relief from deportation upon grant of a pardon or judicial recommendation against deportation, now restricted to convictions for crimes involving moral turpitude, should be made applicable to to deportability predicated on any criminal conviction;

b. The specific preclusion making these clemency provisions inapplicable to convictions relating to narcotics or marijuana should be eliminated; and

c. The specification that a judicial recommendation against deportation shall be ineffectual unless it is made by the sentencing court at the time of first imposing judgment or passing sentence, or within 30 days thereafter, should be eliminated.

Be It Further Resolved, That the President of the Association or his designee is authorized to present the substance of the foregoing resolution to appropriate committees of the Congress, specifically the Judiciary Committees of the United States Senate and House of Representatives. (House of Delegates approved, August 1975)

Mr. **Mazzoli**. Mr. Mailman.

STATEMENT OF STANLEY MAILMAN, ASSOCIATION OF IMMIGRATION AND NATIONALITY LAWYERS

Mr. **Mailman**. Thank you. My name is Stanley Mailman and I speak on behalf of the Association of Immigration and Nationality Lawyers, as a former president, as a member of its board of directors and at the request of its president, Allen Kaye.

I too have a statement which I——

Mr. **Mazzoli**. Without objection it will be a part of the record.

Mr. **Mailman**. Thank you. I don't want to read the statement or to attempt to address all of the points that are made or the subjects that are dealt with in the statement. I think it would be more useful, in just the few minutes that we have, to try to address myself to those of the issues that I can see that the committee this afternoon seems to be particularly interested in now, and on which I think we can be most helpful.

FRAMEWORK

I would like to select as a framework for that, the issue of sanctions, partly because of my admiration for the courage of Ms. Martinez in taking a position which is obviously so unpopular with the committee, but also because I think the kinds of experiences which the members of our Association, as lawyers frequently representing aliens, have, largely supports the position that Ms. Martinez has taken.

IDENTIFIABLE ETHNIC GROUPS

Let me say at the outset that I think there is a misunderstanding frequently by Americans, some of them from recent immigrant groups, (I put quotes around, white immigrant groups) that they came to the United States, they were discriminated against, but they made it. They tend to lose sight of the fact that more readily identifiable ethnic groups have a more difficult time.

I know as a matter of personal experience that when I walk into a building duded up in my pinstripe suit, I am frequently not asked for identification, although the rule is that everybody should be. But an identifiable person, again foreign-looking, and I am putting the same kind of quotation marks around it that Ms. Martinez did, would more likely be asked for such identification.

SANCTIONS

Now I have spent a little bit of time on that issue because we share the concerns that some of the groups that have expressed them have with respect to sanctions, and we recognize that we are not dealing with absolutes here. If we were convinced that we really were inundated with undocumented aliens, and they threatened our society terribly, and if there were nothing else to be done about it, then we might be more disposed to accept the sanctions that the committee is considering, even though we don't like some of the effects of those sanctions. So let me address myself to some of those issues.

First of all, Mrs. Schroeder suggested earlier today that we do not seem to have focused on our problem, and I would say that we really haven't focused on our problem. I think that the Select Commission and perhaps this committee or these committees have assumed that we have a terrible, very large problem in the United States with undocumented aliens.

NO RELIABLE STUDIES

The fact of the matter is that no effective study was done by the Select Commission, that it has accepted the conclusion without testing it and that the General Accounting Office has only this month come out with a report stating that there is no reliable estimate, in all the studies done, showing that we have so many aliens undocumented in the United States. Nor do we have any reliable study showing that they present a great problem.

There are other solutions, not perfect solutions, not a panacea; but it is perfectly clear to those of us who work with the immigration law that the Immigration Service is certainly a stepchild within the Department of Justice. It has worked without a commissioner for almost the last 2 years. It has worked without a general counsel for almost the last 2 years. The designation of people as acting officers or officials is a message that goes right down the line. Funds are not allocated to the Immigration Service. There is not an effective electronic or computer system for the Immigration Service.

When clients ask me:

> I have come to the United States and my time is up on the permit; I would like to know from you, Mr. Mailman, is there a check on this? Does the Immigration Service know?

I must tell them honestly, the Immigration Service as a practical matter doesn't know how long you are staying here because they are just not checking closely.

So one of the things we would say to the committee is do take the tools that you have in place and use them. You don't have people who are prosecuting the deportation hearings. Not enough investigators, not enough trial attorneys. I was at another committee hearing a year or two ago. People from the Immigration Service were asked, how long will it take to get a deportation proceeding going against overstayed soccer players? And an assistant commissioner said, it might take 4 to 6 months.

We have immigration judges, special inquiry officers, who regularly, when you come into their court at 2 or 2:30 and you say—"We are ready to proceed"—will say—"Gee, is it going to be a long hearing?" "It may very well, Your Honor." "Well gee, I have a train to catch at 2:30."

Now that ties in very closely with the issue of what kind of immigration court shall we have? I am not sure it should be an article I court. We are concerned that we should have some kind of a leavening process in the judiciary, as we have it, the courts of appeals. But there ought to be a well paid distinguished group of people who act as judges and who act as appellate judges in the Immigration Service.

Thank you.

[The prepared statement of Mr. Mailman follows:]

PREPARED STATEMENT OF STANLEY MAILMAN

My name is Stanley Mailman. I am former President and current member of the Board of the Association of Immigration and Nationality Lawyers and appear at your invitation and at the request of the President of our Association, Allen E. Kaye.

Our Association is a bar association established in 1946 which now has more than 1,500 members in 22 chapters and at large, throughout the continental United States and in such places as Hawaii, Guam, Puerto Rico, the Virgin Island, the Bahamas, Canada, Hong Kong and England. In the past, representatives of our Association have testified on proposed legislation in the fields of immigration and nationality before your committees and other committees of the Congress. We hope that the accumulated expertise or our membership, who have worked on a daily basis with the Immigration and Nationality Act and the agencies involved in its administration, have been helpful in the shaping of legislation. During the last two years, many of our members have devoted considerable time to the study of the problems now confronting Congress by preparing detailed studies and presenting their recommendations for the use of the Select Commission on Immigration and Refugee Policy. We are, therefore, particularly pleased to have this opportunity to state our views at this hearing on those issues within our every-day experience, following generally the order used by the Select Commission in its report. We understand that we may have the opportunity of later filing a more detailed presentation.

SUPPORT ENFORCING LAWS; TRAINING IN RIGHTS AND LAWS

Firstly, we join in the Select Commission's recommendation that the law be firmly and consistently enforced against those who assist aliens in entering the United States improperly. We also believe that the system for controlling the overstay of aliens be improved. We strongly favor the Commission's recommendation that a high priority be given to the training of INS personnel in the constitutional rights of aliens and citizens and believe, moreover, that it is in the national interest to enhance the knowledge of INS personnel of the immigration laws generally. They can then more effectively enforce those laws and the rights of those who have entered the United States, whether legally or illegally will be better protected.

OPPOSE EMPLOYER SANCTIONS

In respect of employer sanctions recommended by the Select Commission, we are greatly troubled. The proposed complex of warnings, civil and criminal fines, the documentation that would necessarily be developed, and the enormous paperwork, administrative apparatus and expense that would all be generated in the process, loom as an overwhelming, even frightening specter for those of us who are concerned with maintaining the traditional pattern of American personal and business freedom.

The penetration of our borders by undocumented aliens, and the abuse of the visa process and its effects on American law continues to be a serious problem. Particularly as lawyers, we are sensitive to what may be a growing disregard for our laws and values. We are not convinced, however, that the scope of the problem warrants a response that would very possibly deprive us of basic and important personal rights, and impose additional burdens and costs of conducting business in a marketplace already overwhelmed by government regulation.

It has been widely conceded that undocumented aliens have not had a negative impact on social services; indeed, they seem to contribute more in taxes than they take in social services. The concern centers rather on job displacement and wage depression. Here, the studies become fuzzy, inconclusive and sometimes contradictory. Certainly, no body of hard information has been developed establishing that undocumented aliens in the United States have made a visible dent in the availability of jobs to American personnel, or have brought down their wages.

Moreover, it is difficult even to begin to assess these problems without having accurate studies of the number of undocumented aliens currently in the United States or the rate they add to our population. That information was not developed by the Select Commission and an April 6, 1981 report by the General Accounting Office concluded that despite recent studies, reliable estimates are not now available.* In the absence of such essential information, we should not be burdened by the personal and business infringements that would follow from such sanctions without a reasonably certain showing of their necessity. If, indeed, we are genuinely threatened with being overrun, facing a serious loss of jobs, and suffering a wage depression caused by an influx of undocumented aliens, we should then consider the restrictions that would make our way of life more akin to the highly regulated society of many other countries. Is not having to produce an identity card for any governmental or institutional transaction simply a luxury that we cannot afford? The answer to that, we think, is not yet known. We must therefore still oppose a system which would unfairly expose American citizens and legal residents who are racially and culturally identifiable, with certain immigrant groups, [illegible] probable discrimination in their personal lives and their employment opportunities. The effects would undoubtedly also be felt by corporations and other business entities, burdened with the resulting regulation and law enforcement duties. We have already wandered too far from the sense of individuality and freedom, that we inherited from our national forebears who fought hard to secure them, to create yet another tool by which government and other institutions, with their advanced technology and electronics, can further invade our privacy. Also, little attention has been given to the staggering cost to the taxpayer for the apparatus needed to implement, police and enforce such a system of sanctions.

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*The Number of Undocumented Aliens in the United States Unknown (U.S. Govt. Printing Office, 1981).

Finally, our Association has argued that other methods currently available that might reduce our undocumented alien population, have not been effectively used. Unhappily current instruments of immigration law enforcement seem to have deteriorated during recent years. We would hope that instead of reducing funds for the Immigration Service and the Consular Service, increased resources be made available for their adequate staffing and for enhancing their effectiveness through the use of computerized arrival-departure records and other electronic technology. Moreover, we feel that the enforcement of our wage-hour laws by the Department of Labor could be more vigorously pursued for the benefit of citizens and aliens alike. Such enforcement would better protect our domestic work force and reduce the opportunities for job displacement by undocumented workers.

SUPPORT FOR LEGALIZATION

Our Association supports the Select Commission's recommendation that a legalization or "amnesty" program be adopted so that alien who had entered without inspection or who overstayed, and have lived here for a prescribed period of time, sinking roots into our society, can be absorbed and no longer suffer the hazards, exploitation and fear of underclass status. Some of our members, however, familiar with the limited success of similar programs in Canada and certain European countries, question whether amnesty would encourage such aliens to present themselves.

SELECTION SYSTEM: INVESTMENTS; LABOR CERTIFICATION

Without commenting generally on the selection system proposed by the Select Commission, we offer certain specific observations. With respect to immigrant investors, our Association had earlier and independently advocated an allocation of visa numbers to qualified investors who have invested or are in the process of investing a substantial amount of capital, well above the figures last used in the regulations of the Immigration and Department of State in respect of nonpreference immigrant investors. It is difficult to justify the denial of at least a certain number of visas to aliens who can make such a substantial contribution to our economic well-being. Indeed, it would seem that substantial amounts of capital investment and resulting job opportunities that would ordinarily accrue to the United States are instead benefiting the United Kingdom and Canada, among other countries, because of their more sympathetic treatment of immigrant investors.

We also wish to comment on Section 212(a)(14) of the Immigration and Nationality Act, namely the labor certification program. The Select Commission split equally on a streamlined version of the present system requiring job offers and a revised procedure, analogous to the pre-1965 system, under which immigrants without family here would be admissible without a U.S. job offer in the absence of a negative certification. We favor a version of the latter option. We do so largely for the reasons given by Ben Burdetsky, then Deputy Assistant Secretary for Manpower, testifying on behalf of the Department of Labor before this House Subcommittee on September 25, 1975.

In his telling statement, Mr. Burdetsky showed that the job offer program was incredibly ineffective. Firstly, it affects only a small percentage of the immigrants who enter the United States under our selection system, namely the third and sixth preference immigrants who account for only 20% of the 270,000 under our current law. In absolute numbers, this is 54,000, a very small percentage of our total immigration which includes immediate relatives and refugees. That these 54,000 can have any appreciable effect on our economy is hard to believe, even more difficult to establish, Moreover, Mr. Burdetsky pointed to a Department of Labor study which demonstrated that 50% of the immigrants who entered with a labor certification; changed occupations - not just jobs - within two years after arrival. The cost of this system to the government alone, not to speak of the employers who individually participate, is staggering and is probably in the tens of thousands of dollars for each certification. Moreover, the system is a frustrating hoax on the many American employees who respond in good faith to advertisements required by the system and whose chance of obtaining jobs, inevitably slated for alien beneficiaries, is minimal. Without delineating the details, we would favor a program which would leave to the Immigration Service the approval of petitions on the basis of knowledge and skills, with the Department of Labor having the opportunity to impose a negative certification in respect of occupations over-supplied in given areas, determined on the basis of economic and demographic information. Refinements of such a program would require reports to the Department of Labor in respect of unusually high recruiting by individual employers and permit employers to show on an individual basis that a job opening with special requirements cannot be filled in certain areas, despite genuine information on the occupation to the contrary.

REFUGEES

The committees are being addressed on refugees and asylum by organizations whose everyday work is devoted to this subject. We would comment that, in terms of appropriate hearing of the asylum claims presented by aliens already in the United

States or who have just reached our shores, the Select Commission's recommendation for establishing the position of asylum admissions officer and permitting an asylum appeal, seems both fair and feasible.

EXPAND SECTION 245 ADJUSTMENT

We note that the Select Commission has recommended that the present system by which aliens in the United States are permitted to adjust their status to lawful permanent residents, be continued. Under that system, aliens who are paroled or admitted to the United States and qualified for a visa, with certain exceptions, are eligible to change their status without leaving the United States. We would eliminate all but one of those exceptions.

The main exception is the alien who has taken employment in violation of his status and who is not an immediate relative of an American citizen. In practice, this has meant that aliens who have taken employment without authorization, and who are qualified for visas must tax not only their pocketbooks, but the additional facilities of our government agencies necessary to complete their processing even though persuasive humanitarian factors argue for their prompt adjustment. It is much simpler and more cost effective to have their status adjusted by the Immigration Service as a matter of discretion, in the now prevalent one-step procedure than to have them processed by the Immigration Service for a petition and then processed again at an American Consulate abroad. While there are no statistics on this, the anecdotal evidence among our members is that the prohibition of Section 245 to unauthorized employees has not inhibited violations of the immigration law. With respect to crewmen, the abuses that produced the prohibition are no longer a significant factor, for reasons that do not relate to Section 245. It may be, however, that the bar should be continued against transients: their contact with the United States is legally so ephemeral that they should not, philosophically, be able to avail themselves of the procedures for adjustment.

In the event the exceptions are maintained we would favor removing the discretionary factor in respect of those aliens who are eligible in the same way that visas are issued to eligible aliens.

FAVOR FACILITATING TEMPORARY VISA ISSUANCE

Our Association generally favors the facilitation of visa issuance for nonimmigrants recommended by the Select Commission in respect to students, tourists, busines travelers and intracompany transferees. We assume that should consular officers be empowered to issue intracompany transferee visas without the necessity of an Immigration Service approval in cases where the company is well-known at the consulate, this would not preclude concurrent jurisdiction by the Immigration Service. Many of our members concur also with the Select Commission's recommendations which would eliminate certain restrictions on foreign medical personnel.

ADMINISTRATIVE NATURALIZATION: QUALIFYING SUPPORT

The proposal for administrative naturalization seems to stem from the recognition by the Immigration Service itself that the great majority of cases do not present serious issues and can be routinely completed. The requirement of a court decree, while adding an appropriate solemnity, seriously slows the completion of the process. On the other we would not favor a system where naturalization can be denied by the Immigration Service without the right to trial before a judge to which the applicant is now entitled. The right to acquire American citizenship is simply too important to be denied effectively by an administrative officer in the employ of an enforcement agency. Moreover, recision of naturalization should remain a judicial rather than an administrative function.

FAVOR FORMAL REVIEW OF SOME CONSULAR DECISION

We disagree with the Select Commission's recommendation to retain the current system which precludes formal review of any consular decision. Such a system is pregnant with the possibility of abuse, which unhappily occurs. We recommend that in any case where the interest of an American or resident individual or form has been manifested by the filing of a petition which the Immigration Service has approved and in cases involving a treaty visa, the alien applicant should be afforded administrative review of an ultimate visa denial.

REENTRY: OPPOSE MODIFYING "FLEUTI"

The Commission would amend the current reentry doctrine by which even a lawful permanent resident alien returning to the United States is subject to exclusion on any of 33 qualitative grounds. It refers also to the uncertainty of the so-called "Fleuti"* doctrine under which the return from a brief, casual and innocent trip outside the country does not constitute an "entry." The Commission's recommendation is unclear. We are opposed to it if it would resolve ambiguities by effectively modifying the Supreme Court's holding in Fleuti by barring any returning resident, however casual or brief his departure, for certain crimes committed abroad, certain political acts or beliefs, for entry without inspection of for persecution of others. The Commission does not seem to make a distinction between a longtime resident who casually walks across the border for a strong coffee in Mexico, or a new immigrant. Many lawyers who are familiar with the evolving reentry doctrine would be more comfortable with that than with the uncertainty and harshness of such a modification.

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*Fleuti v. Rosenberg, 302 F.2d 652 (1962) remanded sub nom. Rosenberg v. Fleuti, 374 U.S. 449 (1963).

time limits after which deportation proceedings could not be instituted.

ESTABLISHMENT OF NEW COURT

The Association agrees with the Commission's findings regarding the inadequacies in the present structure for immigration hearings and appeals. We do not, however, at this time opine as to the particular form or justification and authority for the establishment of a new court, whether under Article I of the United States Constitution or otherwise. We do believe, however, that such a court should have statutory status and be independent of the Immigration Service and possibly of the Attorney General.

The court should be provided with adequate administrative support so that it can function professionally and render decisions in a timely manner. There should be a trial term (in lieu of special inquiry officer hearings) and an appellate term (in lieu of the Board of Immigration Appeals), and recourse should be had by petition to review to the appropriate circuit court of appeals. Furthermore, the judges should receive a sufficiently high salary to attract competent individuals. Discovery procedures should be established and important due process rights provided for. The present appeals process is but a creature of regulation, and the process should have a statutory foundation and description.

EXCLUSION AND DEPORTATION GROUNDS

Finally, we join with the Select Commission in asking the Congress to modify the current grounds of exclusion. It is unfortunate that the Select Commission, while voting against retention of the current grounds, did not make specific recommendations for their amendment. The present absolute bar on various grounds no longer enjoys wide support and has no solid basis in the requirement of the welfare, safety and security of our country. In a thorough recasting of the provision relating to exludable grounds attention should also be given to the principle of rehabilitation so that an alien would not be barred forever because of an act done when he was 19 years old. We also favor a parallel modification of the grounds of expulsion and would

RECOMMENDATIONS CONCERNING THE APPLICATION OF THE FOURTH, FIFTH AND SIXTH AMENDMENTS

The Association agrees with the Select Commission that the powers of Immigration and Naturalization officers to interrogate, to search, and to arrest, should be fixed by statute. The Commission's proposals as to the provisions of such a statute, however, are inadequate. Starting from the premise that immigration officers "should have the authority to interrogate, arrest and search" in order to enforce the immigration laws, the Select Commission fails to square these powers with the constitutional foundation: the Fourth and Fifth Amendments. The powers of arrest, search, and interrogation by any law enforcement agent of the federal government, including immigration officers, emanate from these Amendments. While the Commission would take more cognizance of these constitutional provisions than under prior law, it does not go far enough in its recognition of the constitutionally mandated rights of aliens.

Temporary Detention

In particular, Section VIII.A.1. of the Select Commission's proposal concerning the powers of immigration officers is a laudable advance toward compliance with constitutional standards. This section concerns the authority to detain temporarily persons whom the officers reasonably suspect are present in the United States unlawfully. The proposal conforms substantially with the constitutional standards for stopping and questioning suspects, as enunciated by the United States Supreme Court in Terry v. Ohio, 392 U.S. 1 (1968), and U.S. v. Brignoni-Ponce, 422 U.S. 873 (1975). Further, the Commission's recommendation makes clear that officers do not have the authority to stop and question based on mere suspicion of alienage alone. Rather, investigative stops may only be effected upon a reasonable belief, based on articulable facts, of unlawful presence in the United States. This criterion is designed to prevent the harrassment of persons of foreign appearance who may well be citizens or aliens with lawful status in the United States.

While the proposals of the Select Commission are laudable given the prevalence of the current practice of stopping persons based solely on foreign appearance, and the widespread practice of warrantless arrests based on these stops, the changes do not go far enough to eliminate these abuses. The change of the quantum of information required by officers from reasonable suspicion of alienage to reasonable suspicion of unlawful presence is too subtle to ensure full compliance by immigration officers. What is needed is an express statement of the articulable facts which can justify an investigative stop. Should a catalogue of such factors not be feasible, the statute at the very least should explicitly prohibit the use of a person's foreign appearance to justify a stop. Reliance on factors such as race, ethnic appearance, or inability to speak English should be clearly interdicted in order to assure that current discriminatory practices in choosing targets of "stops" is discontinued.

The Warrant Requirement

The central consideration with respect to the Commission's proposals for arrest warrants in Section VIII.A.2. is the level of professionalism of the law enforcement officials of the Immigration and Naturalization Service. Arrests based on information derived from investigative stops premised on nothing more than a person's ethnic appearance are symptomatic of sloppy law enforcement. Such intrusions should be premised on specific information derived from investigations and information located in Service records. Arrests based on preliminary investigation, moreover, should be supported by an arrest warrant to assure compliance with the legal standards. Only in the case of exigent circumstances should an arrest warrant be foregone, and in those circumstances the burden should be on the officers to demonstrate that a warrant could not be obtained. This type of procedure asks no more of Service officers than is required of other professional law enforcement personnel. While the Commission, in its recommendations on arrests and arrest warrants, suggests a preference for arrests with warrants, warrants should be mandated for the protection of citizens and aliens lawfully in the United States.

The Commission also asks that probable cause be required for an arrest. It nevertheless envisions a system whereby arrest warrants may be issued and warrantless arrests evaluated by the same officials who are charged with enforcement. While all Immigration and Naturalization Service employees are executive branch members, there is provision for review under the present statute by nominally independent quasi-judicial officials--the immigration judges. The purpose of requiring a warrant under the Fourth Amendment is to interpose an impartial magistrate between individuals and the government to protect against the arbitrary exercise of power. The issuance of warrants and review of warrantless arrests should not be carried out by the officials who are responsible for enforcement.

Permissible Scope of the Search

Section VIII.A.3., Searches for Persons and Evidence, conforms generally with the basic constitutional standards for searches and seizures. However, one crucial problem exists in the Commission's suggestion which ought to be addressed in any statutory revision. The courts, including the Supreme Court, have ofter tated that a search must be limited to the scope necessary to achieve its purpose. This prescription should also be applied to the prerogatives of immigration officers. The Commission's recommendation apparently permits unlimited searches at the border, just as is permitted under the present statute in Section 287(c) of the Act. Immigration officers, however, are charged with screening the entry of people at the border. As such, the subject of the immigration officer's interest is ordinarily standing before him: the alien himself. The most useful and efficacious tool for carrying out his screening duties, then, is the authority to interrogate and not to search. To the extent that searching is necessary, it should only extend to those areas and objects; for example, vehicles where aliens who are seeking unlawful entry may be secreted. Searches at the border, however, under the present authority are essentially unlimited in scope and extend even to the personal papers and correspondence of the alien. This type of search, while possibly helpful to the officer in determining the bona fides of an alien's entry, is repugnant to the Fourth Amendment and raises serious First Amendment problems as well. Thus, such search authority should be proscribed, absent probable cause and a warrant.

Likewise, a search premised on probable cause and exigent circumstances should be limited by the nature of the search--the entry of private dwellings in search of an alien suspected of unlawful presence in the country. Thus, again absent a warrant and probable cause to conduct such a search, there is no justification for rummaging through such an alien's personal belongings in an effort to develop evidence for use at his deportation hearing.

The Exclusionary Rule

We disagree with the recommendation of the Select Commission against the application of the exclusionary rule in deportation proceedings. The report of the Commission states: "A majority of the Commissioners, however, believe that such an extension would intrude on the expeditious processing of deportation proceedings, to the detriment of effective law enforcement." One would only need to substitute the words "criminal cases" for "deportation proceedings" to achieve a statement that undoubtedly would be subscribed to by an overwhelming majority of law enforcement officials in this country today. The argument in favor of the most effective law enforcement possible was apparently resolved, however, by the first Congress of the United States in enacting the Fourth Amendment and sending it to the states, where it was ratified and incorporated into the Constitution. The Fourth Amendment represents a balance struck between effective law enforcement and the rights of individuals to be free from unreasonable searches and seizures. While the Supreme Court has recently opined that the exclusionary rule is but one method of enforcing the Fourth Amendment, it is significant that the Court has also found the rule to be worth the costs to society where it has strong deterrent value. See U.S. v. Janis, 428 U.S. 433 (1976). There, the Court found insufficient deterrent value where the evidence was illegally seized by police officers of a state jurisdiction for use in a civil proceeding, and where the evidence was eventually used in a federal criminal proceeding. The Court held that the ultimate use of the evidence in that case in a criminal proceeding was not forseeable to the state officers, and that they could not have been deterred from its seizure by suppressing the evidence.

In stark contrast, the use of evidence illegally obtained by immigration officers in deportation proceedings, is so direct and forseeable that the deterrent impact is incontestable. The situation is directly analogous to the rationale for suppression in criminal cases. The failure to provide for exclusion of evidence leaves no effective remedy for violations of basic constitutional rights which apply indisputably to aliens present in the United States as well as citizens. Such rights have little meaning to aliens without some recourse to an exclusionary remedy. Whether or not recourse to that remedy "intrudes on the expeditious processing" of deportation cases is outweighed by the desired deterrent impact. Any contrary suggestion would be an argument against the Fourth Amendment itself.

Miranda-Type Warnings

Significantly, the Commission Report makes no mention of a recitation of constitutional rights to the arrested or suspected alien, such as set forth under Miranda v. Arizona, 384 U.S. 436 (1966). This omission represents a regression from the current Service regulations that required such a recitation under certain circumstances. Experience in the criminal justice area shows that there is nothing onerous about requiring a simple recitation of rights to a suspect. The only mention of a notification to the alien of any type is included in Section VIII.B. of the report, where the Commission recommends that the right to counsel attach at the time of deportation and exclusion hearings, and that the alien be notified of that right at that time. Such belated notification, however, is woefully inadequate, as has long been recognized in the criminal justice context. By the time of the deportation hearing, many critical stages of the proceeding have concluded and statements have been taken from the alien. For all practical purposes the preparation of the government's case is complete. The attachment of the right to counsel at this stage has little real meaning to the alien. Actually, under the current practice, the alien is notified of certain Miranda-style rights at the time of issuance of an order to show cause. At a minimum, the current practice should not be discontinued, and it would be far preferable to notify the alien of his rights, particularly the right to counsel, even earlier at the time of arrest and interrogation. If the alien is to be accorded the full measure of his constitutional protection, then it is essential that the recitation of rights be comprehensive and occur at an early stage of the proceedings.

Right to Counsel

We support the Commission's proposal regarding assigned counsel for those aliens who cannot afford to provide their own counsel. However, by making such provision only for permanent residents, the Commission creates an artificial limitation that is difficult to justify in constitutional terms. As the right to counsel is applicable to all persons in the deportation context, then the distinction between penurious permanent residents facing deportation and penurious aliens in other than permanent resident status is untenable, and might be a denial of equal protection and due process. It seems inevitable that the provision of counsel to all persons unable to provide such services for themselves will become a requirement of deportation and exclusion proceedings, since the stakes are so incredibly high, and the potential penalty so onerous.

Respectfully submitted,

Stanley Mailman

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May 21, 1981

Mr. Quentin Crommelin, Jr.
Staff Director
United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Dear Mr. Crommelin:

I return herewith the transcript of my remarks of May 6 at the joint hearing of the Senate and House subcommittees.

While my remarks in the brief minutes afforded for oral comment dealt primarily with the subject of "employer sanctions" I did not mean to convey that that subject was deemed of greater importance by the Association of Immigration and Nationality Lawyers than others addressed in our written statement. At the same time you should know that the position of the Association of Immigration & Nationality Lawyers to express opposition to sanctions was formally adopted on April 24, 1981 at a monthly meeting of the Association's Board of Governors.

Sincerely yours,

Stanley Mailman

SM/rr
Enclosure

Mr. **Mazzoli**. Thank you very much. If any of you panelists have information like that, whether or not it would normally fit into a printed statement, about some of the day to day activities of INS, it would be very useful to us because we are working on that, too. Mr. Semler.

STATEMENT OF MICHAEL SEMLER, MIGRANT LEGAL ACTION PROGRAM

Mr. **Semler**. Thank you, Mr. Chairman.

I am Michael Semler, an attorney with the Migrant Legal Action Program, which is a nonprofit law firm funded by the Legal Services Corporation to assist local legal services attorneys in representing migrant farmworkers.

This afternoon I would like to speak exclusively about the H-2 program. As you know, employers may now import alien workers for temporary labor if unemployed persons capable of performing such labor cannot be found in this country. Although the INS has final authority over H-2 admissions, the primary responsibility for protecting U.S. workers has been placed with the Department of Labor. Each year approximately 15,000 workers are certified for temporary agricultural jobs in the United States, primarily in apples and tobacco in the Northeast and sugar cane in Florida.

I have been representing farmworkers in connection with the H-2 program for 4 years. During this period I have formed several very definite impressions as to the effect of this program. The first of these is that the H-2 program does not serve its intended purpose. The H-2 provisions were enacted to provide a single mechanism, available on the same terms to all employers, for responding to exceptional labor shortages. However, this has become a small scale bracero program, allowing a few favored agricultural employers to routinely import contract workers to meet their labor needs.

I also firmly believe that the H-2 program displaces U.S. farmworkers and depresses agricultural working conditions. Although the H-2 provisions were designed to ensure priority to U.S. workers, the certification system is so flawed that H-2 workers are being admitted without a meaningful determination of whether U.S. workers are available.

Further, I believe this program allows employers such complete control over the foreign workers that they become a captive subclass within our society, legally admitted but nevertheless denied most employment-related protections.

The H-2 program makes no significant contribution to the control of illegal immigration, the advancement of U.S. foreign goals, or other major national interests. Indeed, this program does not serve even its stated purpose of responding to local labor shortages, for access to foreign workers has been governed more by tradition than by demonstrated need. Most importantly, there is no justification for repeated supplementation of the agricultural labor market through this type of program. Agricultural workers can satisfy their labor needs with employers already in the United States if working conditions were brought up to 20th century standards. For these reasons, I believe that the H-2 program should be terminated.

Although I am testifying today only on behalf of the migrant legal action program and our farmworker clients, my conclusions are shared unanimously among organizations representing farmworkers on a national level. The National Association of Farmworker Organizations and the Association of Farmworker Opportunity Programs have authorized me to express their opposition to the H-2 program today. I can also state to you that opposition to the H-2 program is universal among attorneys working with farmworkers in H-2 areas, and among labor organizations representing farmworkers.

Mr. Chairman, time does not allow me to set out my criticisms of the H-2 program in detail. In the time that remains, I would like to focus on the recommendations of the Select Commission concerning revision of the H-2 program.

The Select Commission made three recommendations in this area. The first of these was that DOL should remove economic disincentives to hiring H-2 workers. I agree with this recommendation and urge that the several noneconomic disincentives also be removed. Perhaps the most fundamental weakness in the H-2 program is that only one-half of the recruitment process is now regulated. Although the Department of Labor regulates domestic recruitment, employers are free to recruit almost at will on the sending countries. As a result, employers exercise pervasive control over the contract workers and would surely continue to prefer these workers, even absent tax incentives.

The Select Commission also recommended that the labor certification requirement be maintained. Here too I agree but would go further, making DOL certification mandatory, rather than advisory. Only the Department of Labor has the expertise, the recruitment mechanism, and the institutional perspective to determine whether U.S. workers are available and to set the terms required to avoid an adverse effect on U.S. working conditions.

The third recommendation of the Select Commission was that DOL improve the timeliness of decisions by streamlining the application process. Timeliness in the H-2 program is indeed a problem. However, streamlining is exactly the wrong solution for there is already very little time for recruitment of domestic workers. Under the existing system the job offers need not be filed until 2 months before the season, and are actually available to U.S. workers for only a few weeks, often only after migrant workers have left their homes to join the stream. Revisions in this area should be designed to begin recruitment earlier and to insure that the various decisions in the certification process are made without delay.

Changes of this type would also assist the courts in dealing with H-2 cases. The Federal judiciary has had great difficulty with litigation concerning H-2 certifications. One reason for this is that these cases come to court almost on the eve of the harvest, requiring judicial action almost immediately.

A second problem is that many of these cases come to court without any record of domestic recruitment. When a dispute over terms of the job offer halt circulation of that offer, U.S. workers are not notified of the job and DOL cannot make a determination as to availability. When these cases come to litigation, the courts have no administrative finding as to this issue and no record on which to make this finding themselves. A tightly scheduled recruitment process would bring these cases to court earlier and provide a better factual record.

Mr. Chairman, that concludes my remarks.

[The prepared statement of Mr. Semler follows:]

PREPARED STATEMENT OF MICHAEL SEMLER

Mr. Chairman, I am Michael Semler, an attorney with the Migrant Legal Action Program of Washington, D.C. We are a non-profit law firm funded largely by the Legal Services Corporation to assist local legal services attorneys in representing migrant and seasonal farmworkers. For over 10 years we have been working on behalf of farmworker clients through administrative and legislative advocacy and in litigation. Our overriding goal in these efforts is improvement of the employment conditions of one of our nation's most abused working groups.

This afternoon I would like to speak exclusively about the H-2 program. As you know, under Section 101(a)(15)(H)(ii) of the Immigration and Nationality Act of 1952 employers may bring alien contract workers to this country for temporary labor "if unemployed persons capable of performing such service or labor cannot be found in this country." Although by statute the Immigration and Naturalization Service has final authority to determine H-2 admissions (by delegation from the Attorney General), 8 U.S.C. §1184(c), primary operational responsibility for protecting U.S. workers and working conditions has been placed with the Department of Labor (DOL). Before an employer may obtain H-2 workers he must first seek "certification" from DOL that no U.S. workers are available and that the admission of the foreign workers will not "adversely affect" U.S. working conditions. 8 C.F.R. §214.2(h)(3). Each year approximately 15,000 foreign workers are certified for temporary agricultural employment in the United States. H-2 workers employed in agriculture are concentrated in apples and tobacco in the Northeast and sugarcane in Florida.

I have been personally involved in representing U.S. farmworkers in connection with the H-2 program for four years. During this period I have formed several very definite impressions as to the effect of this program on both U.S. farmworkers and on the aliens admitted as H-2 workers. The first of these is that the H-2 program does not serve its intended purpose. The sole rationale for the creation of the H-2 program in 1952 was to provide a mechanism available on the same terms to all employers for dealing with exceptional labor shortages. However, the H-2 program has become a "mini-Bracero Program" allowing a few favored agricultural employers to routinely import contract workers to meet all or most of their harvest labor needs. I also firmly believe that the H-2 program displaces U.S. farmworkers and depresses agricultural working conditions in those areas where H-2 workers are used. Although the statutory provisions were clearly intended to ensure priority in employment to U.S. workers, Elton Orchards v. Brennan, 508 F.2d 493 (1st Cir. 1974), the existing certification system is so deeply flawed that H-2 workers are being admitted each year without any meaningful determination of whether U.S. workers are available. Further, I believe this program allows employers such complete control over the foreign workers during the selection process and after admission that they become a captive "subclass" within our society, legally admitted but nevertheless denied most employment-related rights and protections.

I believe that the H-2 program should be terminated. This program makes no significant contribution to the control of illegal immigration, the advancement of U.S. foreign policy goals, or other major national interests. The H-2 program has not served even its stated purpose of meeting local labor shortages, for access to H-2 workers has been governed more by politics and tradition than by demonstration of need. Most importantly, there is in fact no justification for repeated supplementation of the U.S. agricultural labor market. Agricultural employers seeking harvest workers could satisfy their labor needs with U.S. workers if wages and working conditions were brought up to 20th century standards.

Mr. Chairman, I would now like to illustrate the profound weaknesses in the existing system by addressing two particular aspects of the H-2 program in greater detail, i.e. the incentives encouraging the use of foreign rather than U.S. workers and the flaws in the DOL certification structure. Thereafter I will return to the argument in favor of termination of the H-2 program and consider the specific revisions suggested by the Select Commission.

1. Incentives Encouraging the Use of H-2 Workers

Many agricultural employers would prefer to hire foreign workers even when U.S. workers are available. One reason for this is that access to temporary foreign workers under the H-2 program eliminates the uncertainty normally associated with the recruitment of an adequate labor force. Under the H-2 program the apple and sugarcane producers can arrange with the Jamaican government to produce a specific number of workers at a designated time and location. If a particular H-2 workers does not appear for work, becomes ill, or otherwise does not meet the employer's needs, another H-2 worker can be obtained to take his place.

Access to foreign workers also frees growers from dealing with the heterogeneous U.S. workforce. Many U.S. migrant workers travel as family groups, including women, young children, and older relatives, complicating the employers' housing, record-keeping, and supervisory obligations. The H-2 program allows growers to avoid these complexities by recruiting only young males.

The H-2 program also allows the grower to block collective bargaining efforts. By controlling the selection of the foreign workers, growers prevent potential leaders from ever obtaining employment. Moreover, the H-2 program gives the employer control over the legal status of the aliens after they have arrived, for the alien's legal presence in the U.S. is dependent on continued employment.

There are also major tax incentives which encourage growers to employ H-2 workers. Neither the H-2 worker nor his employer must pay the social security tax (FICA). This means that a grower can save over 6% of his wage-related costs simply by hiring H-2's rather than U.S. workers. Similarly, several states exempt employers from unemployment insurance (UI) taxes on wages paid to H-2 workers.

2. The Certification Regulations

DOL has been given the unenviable task of attempting to ensure that H-2 workers are not admitted unless all available U.S. workers have been hired. A complex set of regulations has been promulgated pursuant to this goal, yet these provisions are so seriously flawed that they provide little protection to U.S. workers and frustrate the effort to determine whether U.S. workers are available.

The Adverse Effect Wage Rate: The center of DOL's effort to avoid an adverse impact on U.S. working conditions is the "adverse effect wage rate" (AEWR). The AEWR is intended to correct for the fact that the prevailing rate has been be depressed by the availability of foreign workers. Every agricultural employer seeking temporary foreign workers must guarantee that every worker hired (U.S. or foreign) will average at least the AEWR for each hour of employment. The AEWR for 1980 ranged from $4.09 in Florida (sugarcane only) to $3.18 in New York.

DOL bases its AEWR on the average hourly earnings of all field workers in the state at issue (using figures obtained by USDA). This methodology has the advantage of simplicity, i.e. the AEWR can be updated from year to year in 30 minutes by one DOL employee with a calculator. Yet this approach divorces the AEWR from economic reality, for it provides no protection against gradual wage deflation. Certain jobs are physically difficult, are performed in bad weather, are far from population centers, have extremely short seasons, or are otherwise so unattractive that the necessary labor will be drawn only by wages which are high relative to other farm work. Yet because it is based on a state-wide average, the AEWR is set below actual earnings in these crops. Knowing that they have access to an unlimited supply of alien workers on existing terms and conditions, there is no reason for these employers to raise wages over time.

At first glance the AEWR appears to at least set an earnings "floor" and thereby protect U.S. workers. Yet in fact the AEWR is often set so low that it adds little to the minimum wage imposed under the Fair Labor Standards Act. The 1981 AEWR initially developed by DOL for Connecticut, Rhode Island, and Massachusetts was actually below the FLSA minimum. DOL eventually set the AEWR by raising it to the FLSA minimum.

Transportation: The H-2 regulations provide that employers requesting certification must "provide or pay for" the workers transportation to the place of employment. 20 C.F.R. § 655.202(b)(5). However, the regulations do not clearly require that payment for transportation must be made in advance. Certain H-2 employers discourage U.S. workers by refusing to provide them travel advances, even though Jamaican H-2 workers are receiving travel advances (apparently from "third parties" in Jamaica, with deductions made by the employer). DOL's difficulty in dealing with this situation has arisen in part because employers are free to structure the recruitment process in the foreign country to suit their interests and the interests of the foreign country, to the detriment of U.S. workers.

DOL Protections As a Ceiling on Workers' Demands: The minimum terms required of H-2 employers were designed to operate as a "floor" on working conditions, but DOL has also made these provisions into a "ceiling". DOL has ruled that U.S. workers must accept the employment on the terms guaranteed by the regulations or not at all. Any U.S. worker who is actively seeking this work but demands a higher wage or better conditions is deemed "unavailable". U.S. workers have been unsuccessful in reversing the Secretary of Labor's position on this issue either administratively or in litigation. See Flecha v. Quiros, 567 F.2d 1154 (1st Cir. 1977). This position precludes improvement in agricultural working conditions in H-2 areas through the normal operation of the market.

Pro forma Recruitment: The interstate clearance order system asks workers to commit themselves to a season's work hundreds of miles away on the basis of a complex document submitted by a stranger. This system can work only if employers make aggressive, good faith efforts to bridge the gap between the filing of the job order in the local employment service office and the actual hiring of an interested worker. Growers seeking H-2's rarely make these efforts. Their domestic recruitment is entirely pro forma, for their goal is to establish that no U.S. workers are available.

Refusal to Hire Puerto Rican Workers: Much of the recent history of the H-2 program has been written in terms of the struggle over whether Puerto Rican workers would be recruited for work in the Northeastern apple harvest. Puerto Rico Public Law #87 provides that no person may be recruited in Puerto Rico except under a contract negotiated through the Commonwealth. From 1975 through 1977 the Commonwealth attempted to place Puerto Rican farmworkers in the apple harvest while requesting certain benefits not required by the H-2 regulations. Although the apple growers refused to sign such a contract, DOL ruled that H-2's could nevertheless be admitted since the Puerto Rican workers were "unavailable".

Before the 1978 harvest Public Law #87 was amended to allow the Commonwealth to waive the contract requirements. When the Commonwealth exercised this waiver prior to the 1978 season, DOL determined that over 1,000 Puerto Rican farmworkers were available to work in the apple harvest. Approximately 1,000 workers were then flown to the mainland. The New York growers fired most Puerto Rican workers within three days . In Virginia and West Virginia most Puerto Rican workers were turned away without ever being even allowed to enter the camps.

Sanctions and Enforcement: Employers have little fear that they will be sanctioned for violation of the H-2 regulations. DOL's only tool for compelling compliance with the H-2 regulations is denial of certification. In one sense DOL's control of certification is a powerful tool, for denial of certification could have a major impact on growers who have traditionally used the H-2 program. Yet the very power of this sanction limits its usefulness, for DOL is extremely wary of being blamed for the failure of a harvest. In another sense the threat of denial of certification is ineffective because it is too weak. The INS and/or the courts may order that H-2 visas be issued even after DOL has denied certification. Growers are well aware that they will not necessarily lose their foreign workers even if DOL does deny certification.

C. Termination Of The H-2 Program

There is no justification for continuation of the H-2 program. The only true issue in this area is that of employment standards, not availability. The apple producers in the Northeast, the Florida sugar companies, and the other H-2 users could satisfy their labor needs with workers already in this country if their wages and working conditions were competitive with comparable non-agricultural employment.

H-2 users sometimes argue that U.S. workers are physically unable to perform strenuous outdoor labor. Yet approximately 250,000 migrant farmworkers (and 750,000 family members and dependents) labor for months at a time in fields throughout this country. Picking apples is not significantly different from picking grapefruit, oranges, lemons, peaches, pears and many of the other crops now harvested by U.S. workers. Even persons who have not worked in "tree crops", or have not done farmwork at all, could certainly learn to pick apples (which is classified as "unskilled" work) if provided a few days of supervision.

Growers also defend the H-2 program on the ground that it protects the consumer against increased fruit and vegetable costs. However, the labor component in the price of produce in the supermarkets is extremely small, e.g. less than 1¢ per pound in the case of apples. Moreover, savings to the consumer are more theoretical than real in those crops where H-2 users produce only a fraction of the regional or national supply. An employer using H-2 workers in this context may simply continue to sell his produce at the going rate, pocketing any saved labor costs.

While the public benefits little or not at all from the H-2 program, U.S. farmworkers are being excluded from available jobs and blocked from improving their working conditions. Yet lacking union representation and significant political power, farmworkers cannot protect themselves. The H-2 program thus both reflects and perpetuates the special powerlessness of U.S. farmworkers.

D. The Revisions Suggested By The Select Commission

The Select Commission recommended against the adoption of any expanded temporary labor program (pp. 42-45 of the Commission's report) and suggested several revisions in the H-2 program (pp. 226-231). The following comments address the revisions suggested by the Commission:

"Streamlining The Application Process": The Select Commission suggested that DOL should "improve the timeliness of decisions regarding the admission of H-2 workers by streamlining the application process." I believe that the "timeliness" of H-2 certification decisions is indeed a real problem in the existing system. However, "streamlining" the recruitment process is the wrong solution, for there is already very little time for the actual recruitment of domestic workers. The focal point of reform should be to begin recruitment earlier, while U.S. migrants can still be reached in the "homebase" states, and to ensure that the various decisions in the certification process are made without delay. The regulations should be amended to set out a timetable which provides that the clearance order must be filed 6 months before the harvest and that DOL must formally accept or reject the order within 2 weeks of submission. These and similar requirements would ensure that the clearance order would be either displayed to U.S. workers or brought before the courts several months before the harvest.

Removing The Current Economic Disincentives To Hiring U.S. Workers: I strongly agree with the Commission's recommendation that the current economic disincentives to hiring U.S. workers should be eliminated, although this action may have to come from Congress rather than DOL. Employers should not be permitted to keep for themselves the 6.65% employer social security contributions, for this is an employment benefit that the contract workers have earned. FICA taxes should be paid by the employer and by the contract workers just as in the case of U.S. workers, but this money should be gathered in a special fund and paid to the workers upon their return to their country. Under this arrangement employers would pay the same FICA taxes for both U.S. and foreign workers and all workers would receive the same compensation during actual employment.

Congress should also eliminate the exemption in the unemployment insurance tax for wages paid to H-2 workers. The UI system rests on the theory that all businesses benefit from the maintenance of stable consumer purchasing power among the temporarily unemployed. As producers for the primary market, fruit and vegetable growers benefit directly from this maintenance of consumer demand. Moreover, by hiring foreign workers rather than local U.S. workers, these growers directly contribute to any unemployment in their area. Surely it is unfair that these growers are the only employers exempted from sharing in the resultant increase in unemployment insurance payments.

Retain Labor Certification by DOL: I also strongly agree with the Commission's recommendation that the DOL labor certification requirement be maintained. Indeed, I would go further and recommend that DOL certification be mandatory rather than advisory. If contract workers are to be admitted only when U.S. workers are not available, the government must be able to successfully defend its finding as to "availability". Only DOL has the expertise, the mechanism, and the institutional perspective to determine whether U.S. workers are available and to set the terms required to avoid an adverse effect on U.S. working conditions.

Ending Dependence On A Constant Supply Of H-2 Workers: I also support the Commission's conclusion that "government, employers, and unions should cooperate to end the dependence of any industry on a constant supply of H-2 workers". The regular use of foreign contract workers under the H-2 program advances no national interest while undermining the economic welfare of U.S.farmworkers and legitimizing the maintenance of an unprotected "subclass" within the workforce.

"Slight Expansion": The Select Commission did not recommend any expansion of the H-2 program. As the final item in this section of its recommendations the Commission noted that "the above does not exclude a slight expansion of the program." This comment dramatically illustrates the extent to which the H-2 program invites efforts to set the number of admissions in political terms, quite apart from any actual measurement of the need for these workers. The principle underlying the H-2 program is that foreign workers should not be admitted unless U.S. workers cannot be located for the particular job at issue. The fundamental rationale for the existing certification structure is that the determination as to availability can be made only after an actual effort to "test the market" for interest in the employment at issue. If the DOL certification process is to be retained, as the Commission suggested and as I likewise recommend, then it is that process which must determine the size of the H-2 program. It is not consistent with Section 101(a)(15)(H)(ii) to mandate either an increase or a decrease in the number of H-2 admissions prior to the completion of U.S. recruitment.

Mr. Chairman, that concludes my prepared statement.

Mr. MAZZOLI. Thank you very much, Mr. Semler, and I thank all you panelists because each of you is an expert in the field. To limit yourselves to 5 minutes is difficult, but within those constraints you have done very well, and I thank you for your forebearance.

I think our panel ought to, with the indulgence of the other panelists, ask any questions of Mr. Shattuck so that he might get about his business.

Mr. Frank?

Mr. FRANK. I ask this, Mr. Shattuck, and it's the question of the identification card. I guess I would like to, as a dues-paying member of the organization, get some elaboration on what are the dangers of the card that people fear? You see, I'm skeptical. I am not sure what they are. What is the problem if everybody has an identification card that he or she has to show to get a job?

Now I understand the discriminatory problems and I share a lot of the fears that Ms. Martinez had. But I am talking now about the civil liberties privacy part of Senator Ervin standing naked in front of the Government. Why am I naked if I have a card?

Mr. SHATTUCK. I will try to give you your money's worth if you say you are a dues-paying member of the organization.

There are two points that I would like to quickly make on that and then I would be happy to respond in writing at length to other questions that the committee might have.

First, the identification card proposal would run counter to all of the work that has been done over the last 15 years with respect to standard universal identifiers. A standard universal identifier is a number or a system of information which is available for a variety of purposes and provides for a national registry of all the information that is necessary to perform certain Government functions. In this case the function would obviously be the screening of illegal aliens, but other kinds of functions could be imagined over the course of time.

Do we want to include information in that kind of registry about political activities? Do we want to include information in that registry——

Mr. FRANK. How does having a card that you have to show in order to get a job, how did you get from there into me telling the Government about my political activities?

Mr. SHATTUCK. We are talking about the possibilities of abuse. I am granting the fact that a very strictly limited information bank, such as the social security system now is is not abusive in the manner in which we are afraid that a national identification card might become.

The second aspect is that it is an invitation to conduct administrative searches, just as driver's license possession requirements are an invitation to conduct searches of drivers. But in the case of drivers, there are criteria that the courts require the police to observe before those searches are conducted, whether the car is weaving or whether there is some indication that the driver is not competent.

In the case of a social security card that is issued for the sole purpose of determining whether someone is lawfully in the United States and can work, the only criteria for that search that can be imagined is whether the person appears to be foreign, or appears to be alien. And under those circumstances I think you get back into the question of——

Mr. FRANK. All right, that is discrimination. But what if it were also used to try to deal with what seems to me to be a growing problem of the underground economy, and leave out discrimination because I understand that and I am bothered by that and that may be conclusive for me ultimately, but I think it is also important to look at the broader question about what if you could solve it. How about dealing with the underground economy, with people who are working and not showing up on any roles, and cheating us all out of taxes? Is that bothersome to you?

Mr. SHATTUCK. The question again is one of how broad the access is going to be to that kind of system of information, which is the system that would underlie the card. Obviously the card isn't going to be a thing in itself. Who would have access to that information? When employers and Government officials are routinely getting access to information about a person's age, work status, residence and various other kinds of personal criteria that are not generally available to Government officials and employers at the moment, we think that there is an invasion of privacy per se in that. But the additional information that might be——

Mr. FRANK. I understand there are fears, but is there any substantial body of information on negative things that have happened from the identifications that we now have? I mean there are a lot of identifications floating around. Is there any substantial pattern of abuse that has yet come to light?

Mr. SHATTUCK. Well, generally the identification systems that we are talking about don't require possession, with the exception of two systems that I am aware of. One is the draft card and the other is the driver's license. And there have been very compelling determinations that those identification systems should be required.

I don't know of any similar compelling determination that is being made with respect to work authorization because the testimony hasn't indicated to us that that kind of information is needed.

Mr. FRANK. We may actually be about to vote on the budget. I didn't think that was ever going to happen.

Mr. MAZZOLI. We have 15 minutes and I wonder if I could yield to the gentleman from Wyoming for 5 minutes for his questions and then Dan, if you have any questions. We also have to get to the floor. The question is do you want to come back after the floor vote for the followup? I think we had better not. I think we are going to lose our panel.

Senator SIMPSON. You gentlemen are going to leave me here alone, are you?

You know, what Congressman Frank is saying is very important to me because it sounds extraordinary but I feel like he does in wanting to ask, you know, where is this other than you know, a fear? We are going to have to deal with this thing in reality and not fear.

And I have said before and I will say again, the Hispanics have the most to fear. Let's just start there and go.

But my question is this. How does a card, if we come to a card, and I hate to keep coming back, let's say permit or system or whatever, that simply says on it I am authorized to work and be employed in the United States of America, that does not have to be carried on the person at any time whatsoever except when you present it to the employer, with the only backup information that might be behind it the maiden name of that person's mother and nothing more, no bank showing anything, nothing. How does that present what you portray?

Mr. SHATTUCK. Senator, I think the qualifications that you added are very important. I have addressed what I understood to be the thinking of a substantial number of commissioners, it is unclear exactly how many, which is that a card whose possession should be required would be issued and a substantial amount of information would be available in a data bank underlying that system.

If we are talking about the system you have just mentioned, I don't think that it is any different from the existing system of social security identification. But the one difference, I suppose, is that it is not necessary as a precondition of employment to show your social security identification, and that is a condition on employment which I think is a burden, albeit not a substantial one, but a burden which doesn't exist under current law, and which is an employment burden as opposed to a privacy burden as you formulated it.

Senator SIMPSON. Then I am going to just ask one short one and I won't even use up the full time. I hear you talk about the administrative search, and that is curious to me because the reality of it is that if the guy doesn't have a card and he goes out to the employer in the field to work and he says I don't have a card, he doesn't get a job. That is what happens to him. They don't say OK, you don't have a card so we are going to give you an administrative search. I mean this is an employer out in the field. He has people standing in line. He says you don't have a card so get the hell out of here, you know. That is all he says.

Mr. SHATTUCK. The search I was referring to, Senator, would not be conducted by the employer but would be conducted by law enforcement officials who are trying to find illegal aliens, and it is that kind of search and its discriminatory impact and invasion of privacy that we are concerned about.

Senator SIMPSON. What is an invasion of privacy about a search of a person who is here illegally?

Mr. SHATTUCK. Well, a search of an entire factory or a series of factories where there is some thought that there are illegal aliens and it can be quickly determined to find out whether or not they have the card would involve the privacy of a substantial number of people.

Senator SIMPSON. The person you are talking about is here illegally. He has violated the laws of the United States of America. Now we are to tilt it the other way and come back to this; is that correct? That is your feeling? Only in America do we do that. We are good at it.

Mr. SHATTUCK. Senator, I am just saying that in the instance where there is no other basis for conducting the search than the suspicion that there are one or more illegal aliens in a particular workplace, that should not be enough to invade the privacy of all other workers.

Mr. MAZZOLI. Thank you very much, Senator. I wish that I could proceed for a full 5 minutes. I have some questions that I would like to ask Mr. Semler about the H-2 program, but I unfortunately don't have the time now. We had quite a few people yesterday who seemed not to be avaricious and rapacious people at heart who suggested that not only was there a need for H-2 programs, but there were a lot of Americans who simply weren't available to do some of these jobs.

I guess the question is relative. If you pay $50 an hour as against minimum wage, you may find Americans prepared to do it, but you wouldn't find Americans eating the food they prepared because no one could afford to buy it.

The world is very imperfect, and we have to deal with it. I would follow up with some questions with you, Mr. Semler, either by telephone or in writing.

Mr. Mailman, I would love to have the name of the guy who comes waltzing in at 2 and says I have to leave at 2:30. We just today went into the effort of trying to enhance the INS budget and the number of positions. It is going to be very difficult for a lot of my friends to vote for budget increases, and it is difficult for all of us in this climate, to vote for that money.

We are convinced that they are overworked, but obviously if they are not putting out full value for the dollars that they are earning, then I think that we would want to understand that too.

So without blowing whistles on people, though I think that is an honorable profession, I would like to find out who is doing that.

MOST JUDGES DEDICATED: NEED INDEPENDENCE

Mr. MAILMAN. In the short time I had I didn't make the qualification that of course there are many very able and very dedicated judges. The big issue is their independence, the fact that they don't have the independence that they should have. Nor are they paid sufficiently so that you have the kind of hearing that you really should have and that you want.

Mr. MAZZOLI. Well gentlemen, thank you so very much. I appreciate it. I wish we didn't have such a helter-skelter life, but we thank you and our panel stands adjourned until tomorrow at 2.

[Whereupon, at 5:05 p.m., the subcommittees adjourned.]

FINAL REPORT OF THE SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY

THURSDAY, MAY 7, 1981

U.S. CONGRESS, SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY OF THE SENATE JUDICIARY COMMITTEE AND SUBCOMMITTEE ON IMMIGRATION, REFUGEES AND INTERNATIONAL LAW OF THE HOUSE JUDICIARY COMMITTEE,

Washington, D.C.

The subcommittees met at 2:05 p.m., in room 2228 Dirksen Senate Office Building, Hon. Alan K. Simpson (chairman of the Senate subcommittee) presiding.

Present: Senator Grassley; and Representatives Mazzoli (chairman of the House subcommittee), Hall, Frank, and McCollum.

Senator SIMPSON. The hearing will come to order. Today is the third and final day of our joint hearings on immigration and refugee policy. In the near future we will proceed with our own hearings in each house, Chairman Mazzoli in the House of Representatives and with me to chair a series of coming hearings over the next months in this chamber. At the conclusion of that, I hope we will have something to present to the American public in the way of revision and reform our immigration laws.

As I have said, these joint hearings are rather unprecedented. This is the first time in 30 years that it has been done. When we opened the hearings I remarked that immigration and refugee policy reform is a perilous minefield of emotionally charged issues. The real need is there to do something. That need of course is challenged by historical political inertia. For the first time I see the signs being favorable to do something. We see constituencies forming together, and they are not historically aligned constituencies, either.

So I think the American people are saying do something—something that is fair, that is balanced, that is without racial overtones or characteristics, which have characterized our other immigration policies in years past; do something in our national interest, something unmistakable, something reasonable and something for heaven's sake, understandable.

That is our mission and we continue it. I hope we can continue the debate in a calm and a compassionate and deliberate type of proceeding, recognizing the tremendous difficulty of the question itself and recognizing the sincerity of those who will speak to it.

I believe that the first 2 days of the joint hearings have indicated that we can conduct the debate in that manner. That is something that Chairman Mazzoli and I have pledged to do and are determined to do, either jointly or in our separate capacities. We will continue to conduct them in that way in the coming months.

Let me recognize Chairman Mazzoli of the House subcommittee.

Representative **Mazzoli**. Thank you very much, Mr. Chairman. I would like just a couple of moments. Again I want to thank you, as I have done before, for the great cooperation you have shown and your staff has shown in helping us prepare these meetings. They have been extremely interesting to me, and I think fruitful for the consideration of these vexing issues. I think they have shown pretty clearly to all the people who would care to look that these two subcommittees have the intention to take some action.

It isn't easy, because as the gentleman from Wyoming has said, it is a political minefield. But I believe that if there were ever the portents, and I am not always great on omens, they are excellent now for some action. I am hoping that action we take is going to be in fulfillment of what this nation stands for, which is fairness and balance. We have assembled before us, with panels yesterday and the day before and today, the very experts we need to make these judgments.

So Mr. Chairman, I want to thank you again and your people, and I appreciate your hospitality these last several days.

Senator **Simpson**. Thank you very much. I believe you had a unanimous consent request under your House rules?

Representative **Mazzoli**. I ask unanimous consent, Mr. Chairman, that this meeting be permitted to be covered by TV broadcast, radio broadcast, and still photography.

Senator **Simpson**. Well, that sounded very good, whatever it was.

Representative **Mazzoli**. It is not bad for off the cuff.

Senator **Simpson**. Over here we just keep plowing along and if anybody will stay, we are grateful.

Senator Grassley, did you have any comments, since you are the only other member of either subcommittee now here? If you did, it is certainly accepted in a brief form.

Senator **Grassley**. No, Mr. Chairman, I don't have any opening statement, but I am glad to be able to be here to listen to this testimony and be made more intelligent on the general subject.

Senator **Simpson**. Well, I deeply appreciate your interest in this issue as a new member of this subcommittee. These joint hearings have already proven to me that the five of us in the Senate subcommittee are ready to work and are producing themselves and their staffs for that purpose.

Now we will go forward with the panel on public organizations. We have Mr. Charles Sternberg, the chairman of the Committee on Migration and Refugee Affairs, the American Council of Voluntary Agencies for Foreign Service, Inc.; Mr. Roger Conner, executive director of the Federation for American Immigration Reform; Ms. Gladys E. Alesi, executive director of the American Immigration and Citizenship Conference. It is nice to have you here. And Ms. Phyllis Eisen, the director of the immigration program of Zero Population Growth.

So if you would proceed, please. I believe you have been informed of the time limitations. Your entire remarks will be presented into the record. I might add that those remarks, which I personally have had a chance to review, as well as those by all of the participants in the panels today, are extraordinarily important to us, pro and con, and very helpful.

So if you would proceed—first come, first served.

STATEMENT OF CHARLES STERNBERG, CHAIRMAN, COMMITTEE ON MIGRATION AND REFUGEE AFFAIRS, AMERICAN COUNCIL OF VOLUNTARY AGENCIES FOR FOREIGN SERVICE, INC.

Mr. STERNBERG. Thank you very much. Mr. Chairman, Mr. Chairman, Senator Grassley, my name is Charles Sternberg. I am the chairman of the Committee on Migration and Refuge Affairs of the American Council of Voluntary Agencies. The agencies that signed the statement which you have and which I am not going to read perhaps should nevertheless be listed by me.

They are the American Council for Nationalities Service, the American Fund for Czechoslovak Refugees, Church World Service, the Hebrew Immigrant Aid Society, International Rescue Committee, Lutheran Immigration and Refugee Service, Migration and Refugee Service of the United States Catholic Conference, Polish American Immigration and Relief Committee, Tolstoy Foundation, World Relief and the Young Men"s Christian Association. Colleagues from these agencies are with me and if you care to direct any questions to them, they are of course ready to reply.

Together, the organizations I have just mentioned have sponsored and resettled in the United States pretty much all the refugees who have come here since the inception of American refugee programs. They represent the refugee arms of the major American religious communities. They represent important ethnic communities, nationality groups, and at least two of them have neither a religious nor a national characteristic.

The testimony we prepared and which I very briefly highlight here deals exclusively with section 5 of the report and the recommendations of the Select Commission, which I believe is entitled "Refugees and Mass Asylum Issues."" We limited ourselves to this one section because all of us place a great emphasis on refugee matters in our work. Some of us actually do not have a general immigration program, general immigration activities. Sharing the same concern, it was easy for us to reach a concensus, which is presented to you in the statement which you have.

Quite frankly, had we tried to reach a concensus on the very thorny and complex immigration issues that the Select Commission grappled with, we may not have succeeded, at least not as easily.

Coming now to the highlights of our testimony, first we are pleading for a worldwide implementation of the Refugee Act of 1980, the purpose of which was to establish a universal refugee law. At this time there are areas in which substantial groups of refugees cannot apply for admission to the United States. Some of these groups are excluded by design and we have made a special plea for Chinese and Cuban refugees who right now cannot apply, and some of them are excluded by the geographic limitations which resulted from the consultation process that took place twice in the past. We believe it is not necessary that such exclusions be present in our refugee policies.

I am not speaking of numbers. We are not discussing the question of whether there should be a certain number of Chinese, a certain number of Cubans, a certain number of Burmese. I could mention many nations which have produced refugees.

All we are pleading for is that quotas be set in such a way that a refugee anywhere has a chance to apply and that at least some modest numbers be set aside for those who do not belong to the major groups of refugees, with whom for understandable historical, traditional, political reasons, we are now mainly concerned.

Now this primary concern for having a universal law the way it is written, and having it implemented within the spirit in which it was written—are my 5 minutes up?

Senator SIMPSON. You have one more minute, Sir.

Mr. STERNBERG. I must be speaking very slowly today. Well, I will speak faster now.

In order to implement what we are pleading for, something has to be done. The Immigration Service is not in a position, because of limitations of staff, to reach everywhere where there are individuals or pockets of refugees. We don"t think it is necessary. We believe that wherever the Immigration Service cannot reach, it should delegate not its function but part of its function, to the Consular Service. There are many ways of having the INS make a final decision once the Consular Service has submitted a file, and once the Consular Service has made a recommendation.

Now there is one issue which I left for the end which concerns us extremely, urgently at this time, and that is the adjudication process, which recently has changed for the worse in our judgment. The issue is one primarily in Southeast Asia. It is important that when we adjudicate refugee applications, we keep in mind both major criteria of the refugee definition, the second one being that a person who has well founded fear to return to the country from which he came, whatever our perception of the reasons why he came, must not be returned.

This, alas, is not taking place right now. Refugees are deferred in very large numbers, deferred now because, I understand, a high level decision is pending. But we do hope, we plead with you, to read our statement which touches on this issue, and to read it with the spirit of compassion with which, Mr. Chairman, you opened this meeting.

Thank you very much.

Senator SIMPSON. Thank you very much. That was very important testimony, Mr. Sternberg. You know, without the work of the voluntary agencies of this Nation, we would be crippled in dealing with the challenge posed by the large number of refugees now entering our Nation. There is no question in my mind about that.

[The prepared statement of Mr. Sternberg follows:]

PREPARED STATEMENT OF CHARLES STERNBERG

Mr. Chairman, the private association working together in the American Council of Voluntary Agencies have carried, in the words of the Select Commission, "the major responsibility for the domestic resettlement of refugees." Ever since there have been refugee programs and up to the arrival of the first wave of Cuban refugees in 1960, the voluntary agencies were not only the main but the sole actors on the resettlement scene. When the United States became a country of first mass asylum, the government had to assume an important role in the resettlement operation. And, since 1975 when the first large group of Indochinese refugees reached the United States, a tri-lateral relationship and division of labor have developed between the private sector, the state social services, and the federal agencies entrusted with the increasingly difficult resettlement problems. Through almost half a century, the private organizations have closely cooperated in the resettlement work. They have learned to speak with one voice on refugee issues. Today, we offer testimony on behalf of the following organizations:

American Council for Nationalities Service, American Fund for Czechoslovak Refugees, Church World Service, HIAS, International Rescue Committee, Lutheran Immigration and Refugee Service, Migration and Refugee Services, United States Catholic Conference, Polish American Immigration and Relief Committee, Tolstoy Foundation, World Relief, Young Men's Christian Association.

I. THE WORLDWIDE SCOPE OF THE REFUGEE ACT

The voluntary agencies welcomed the passage of the Refugee Act of 1980 and subscribed to the concept it embodies, namely our country's concern for refugees regardless of their country of origin, or the type of oppression from which they are fleeing.

In practice, however, we fear that the consultation process has not reflected the worldwide scope of the Act. Entire geographic areas have not been inclued in the quotas, or ceiling figures, and, in two instances, refugee groups included in the past were left out.

At this time, Cuban refugees and Cuban defectors in third countries—whether Spain or Portugal, Costa Rica or elsewhere—are precluded from applying for admission to the United States. So are refugees from Mainland China. The rationale in the Cuban case was that the internationalization of the problem, and our intention to establish an orderly departure program from Cuba, which would benefit former political prisoners, require the exclusion of Cuban refugees wherever they may be and whatever their plight. It was held that in view of limited admission numbers, it would not be fair to divert numbers that could be used to admit former political prisoners to those refugees who were fortunate enough to reach a third country.

This dichotomy between refugees and former political prisoners is spurious. There is no predetermined pool of numbers to be used either for one or the other group. The orderly departure program which served to justify the ending of the refugee program never got off the ground. Neither former political prisoners nor refugees are now coming to the United States. And not even former prisoners who have become refugees in third countries may apply. We believe that our anger at the tactics of the Cuban government which, through Mariel, sent us a share of Cuba's misfits, should not be vented on bona fide refugees.

The official explanation for placing Chinese beyond the ambit of our political or humanitarian interests was that "the Chinese refugees have found a haven in Hong Kong where they will be received and allowed to resettle." This was never true. For many years, Hong Kong has considered Chinese refugees as illegal entrants. Those caught at the beaches were returned to China immediately. Only those who eluded the border guards and reached Hong Kong proper were permitted to stay. Coincidentally with the termination of our Chinese refugee program, the Hong Kong authorities stopped the so-called touch-base policy and as of November 1, 1980, all Chinese refugees apprehended anywhere in the Crown Colony are treated as illegal immigrants and deported to China.

As far as Hong Kong is concerned, there are no Chinese refugees, and we appear to countenance the on-going policy of mass refoulement into communist China by having abolished our small quota of 100 a month.

It is more than a comment on the recommendations of the Select Commission that we plead today for an affirmation of the universal character of the Refugee Act of 1980 by establishing ceiling figures for all areas of the world without singling out any ethnic groups as being of no concern to us. Cubans should be able to qualify along with other Latin Americans; Chinese, Burmese, or refugees from the Philippines should be able to qualify along with other Asian refugees. The issue here is not numbers but equity.

There is, however, a corollary to this approach. Unless refugees have access to the application process through the Consular Service in areas which the INS cannot cover, and unless the Consular Service is permitted to conduct the screening and submit its recommendations to the Immigration and Naturalization Service in writing, individual refugees and refugee pockets in many parts of the world will be barred de facto, even if they are not excluded by the working of the quotas.

II. POLITICAL PRISONERS, VICTIMS OF TORTURE, AND PERSONS UNDER THREAT OF DEATH

The need to abandon the in-person INS screening of all refugee applicants for admission is no less obvious in the case of political prisoners, victims of torture, and persons under threat of death, who are the subject of a special recommendation by the Select Commission. The voluntary agencies totally support it. It is not technically feasible for INS officials to be present in all areas where such extreme situations arise, and we should not permit a technical requirement to defeat our goal.

The adoption of the recommendations of the Select Commission would demonstrate to the world that political prisoners, victims of torture, and persons under the threat of death because of their religion, race, nationality, or political opinion, are of special humanitarian concern to the United States.

III. ASYLUM AND MASS ASYLUM

Of all the provisions of the Refugee Act of 1980, the one that has largely remained dead letter is Section 208. Interim regulations were published. But since neither the Immigration and Naturalization Service nor the State Department has been able to keep pace with the huge number of asylum applications that have been filed, most remain pending and most asylum applicants remain in applicant status which, as the Select Commission has pointed out, is not in the interest either of the potential asylee or of the United States.

The proposed recommendation that group profiles be developed, which would expedite the adjudication of asylum applications, deserves serious consideration. It would, to cite two salient examples, simplify the granting of asylum to most Afghan and Ethiopian refugees for it can safely be assumed that in few cases will we find that Afghans and Ethiopians now in this country can be returned to either of those two countries, one occupied by the Soviet Union and the other propped up by Cuban military forces, as having no well-founded fear of persecution if deported back home.

A caveat, however, has to be inserted here. While a streamlining of asylum procedures is necessary, asylum matters are so weighty, the very concept so important, the need for scrupulous adherence to judicious conduct so overriding that the right to appeal must not be taken from the asylum seeker.

Mass first asylum, after the experience with Mariel and the Haitian boat cases, is the most difficult refugee problem we have to come to terms with. The presence of substantial numbers of Salvadoran and Nicaraguan refugees points to a trend which has not run its course. It is to be expected that an aggravation of internal conditions in El Salvador and Nicaragua will result in more rather than fewer people seeking a haven in the United States. It is, therefore, essential that we devise orderly mechanisms to deal with the problems of mass asylum, always with a view to assuring equitable and humane treatment to asylum seekers.

As for the Cubans already here, we will have to live with the likelihood, if not certainty, that Cuba will not readmit even those who flagrantly do not have a claim to acceptance by the United States, and not even those who would prefer to return home. Thus, since they are here, and will not be able to leave, it becomes incumbent on us to find a solution that will remove them from the legal limbo in which they find themselves and which, if perpetuated, will aggravate the adjustment and rehabilitation predicament.

With regard to the Haitians, moreover, we must be sensitive to the perceptions of many persons that Haitians are being discriminated against because of race, and the findings of Judge King which have found corroboration in recent events of severe repression in Haiti.

IV. REFUGEE RESETTLEMENT

The recommendations of the Select Commission in the area of refugee resettlement are constructive and are set out along lines that converge with the thinking of the voluntary agencies. We fully subscribed to self-sufficiency as a goal of resettlement. We have moved in the direction of refugee clustering beyond the regions which have thus far received the majority of the refugees, whether Indochinese or Cuban. While there is a natural tendency of ethnic groups of similar backgrounds to settle within reach of one another, thereby developing cohesive neighborhoods and a social climate that mitigate the feeling of loneliness common to most uprooted people, we are striving to spread such enclaves beyond the states which feel impacted by the numbers of newcomers they have received. In order to reduce welfare payments, we are convinced that the separation of Medicaid eligibility from cash assistance will be the most constructive approach.

However, we cannot leave the subject of resettlement without touching upon an unfortunate change in the way refugees are being screened for admission to the

United States, a subject which has become particularly troublesome in Southeast Asia. What may well be at stake is the credibility of our resolve to stand by the victims of the communist take-over of Indochina and our readiness to assist the Southeast Asian countries of first asylum in their efforts to cope with their refugee problem in a responsible manner. If indeed Vietnamese boat-people can be presumed to have made their long and dangerous journey through pirate-infested waters only in order to better themselves economically, if indeed it can be assumed that men will risk the lives of their children and expose their wives to the high risk of mass rape only to eventually make a better living, one wonders why the civilized world responded to their plight with such anguish a year ago. Nothing has changed since then. Only the numbers have gone down. Fewer refugees manage to escape from Vietnam, and fewer may be getting through to the shores of Malaysia and Thailand.

No less perplexing is the fact that growing numbers of Cambodians are now being turned down—technically they are being deferred until the issue is resolved in Washington—as just being economic migrants. As if people who came out of the burning hell that was Pol Pot's Cambodia had no other complaints than the lack of a good job. Survivors of genocidal regimes, whether Jews or Cambodians, deserve better than being told to go home again because the new rulers are less genocidal than the old ones. These are refugees who lost all their next-of-kin and have nothing to go back to but their nightmares.

Economic and political factors are closely intertwined in totalitarian countries. Where the State is the main employer, as well as the wielder of absolute power, forcible collectivizations, new economic zones, forced labor camps, and the rest are all part and parcel of a system that creates such unbearable conditions that even people who have no clear perception of the root cause of their suffering flee at great risk to their lives. To impugn their motives as being "purely economic" and therefore not worthy of our solicitude bespeaks a great lack of sophistication and political judgment. But the matter becomes downright bizarre if young men who escaped because they did not want to serve in the Vietnamese or Laotian army are now denied acceptance as refugees.

If we continue to deny admission to such young people, does this not imply that we somehow believe it is the duty of all young Vietnamese and Laotians to be soldiers and do their part in the military occupation of Cambodia?

It must be kept in mind that the INS deferrals contain not only a finding that the applicants in point did not suffer persecution before they fled, but also the corollary finding that they have no well founded fear of persecution if returned to Vietnam, Cambodia, or Laos. Escape, it is held, will go unpunished, and the young men who preferred escape to service in the armed forces will go unharmed. If this egregious position—in the face of strong State Department representations to the contrary—should be permitted to prevail, are we not giving a clean bill of health to Hanoi and the two surrogate governments it controls?

It goes without saying that the ASEAN countries are closely watching what we are doing. Thailand has deported refugees before, and Malaysia did not hesitate to push boat-people back out to sea when it felt that it might not be relieved of their burden. If we affirm the present policy and rule the refugees now deferred are inadmissible, the Thais and Malaysians are bound to interpret this as a signal that the closing of their borders, refoulement, and mass repatriations of refugees now in their countries would not be faulted by us. No country is likely to accept our rejects, and if the refugees are not refugees, why should Thailand and Malaysia or any other country offer them hospitality? The only result we will achieve is another international crisis which will bring with it the loss of innocent lives.

This issue arose after the Select Commission had concluded its work. We do not doubt that it would have received the Commission's attention had it evolved earlier. In summing up, we wish to commend the Select Commission for its contributions to a rational discussion of the complexities of refugee and asylum policies. We are deeply convinced that the Congress and the new Administration will remain responsive to refugee needs. The defense of refugees is an integral part of the defense of the Free World.

Senator SIMPSON. Next, Roger Conner, please.

STATEMENT OF ROGER CONNER, EXECUTIVE DIRECTOR, FEDERATION FOR AMERICAN IMMIGRATION REFORM

Mr. CONNER. Thank you, Mr. Chairman, and congratulations to all of you on these remarkable hearings.

As to the Commission report, we applaud the proposals to close the back door, which are long overdue, but we oppose opening the front door further until we see whether the back door has really been closed, until we have a better idea of how many are already in the house, and until we have a better idea of how many guests for whom we haven't planned are going to invite themselves to the party.

I would like to address three specific issues in my testimony today. Number one, we believe that Congress should set an all-inclusive ceiling on the number of legal immigrants, which includes all categories of immigrants. The Commission's public statement is that it recommended, and I quote, "a total limited immigration number of 350,000 per year" plus 100,000 per year for 5 years "to reduce backlogs."

This statement is affirmatively misleading for the Commission actually rejected the idea of a total immigration limit. Refugees, ministers of religion, and three different types of relatives of American citizens enter above this limit.

In 1980, legal immigration totaled 808,000. Had the Commission's recommendations been in effect, legal immigration would have been over a million, and there is no limit to how high it could rise in some future year.

We support the kind of ceiling set in the Immigration and National Security Act of 1981, which is S. 776 and H.R. 2782. This bill sets a ceiling and permits the President to reallocate the numbers within the ceiling in a given year or even borrow from the next. But only Congress is able to raise the ceiling.

Those who argue against a ceiling say that there is no flexibility. Yet I challenge them to name a single crisis in this century which could not have been handled under this approach. After all, Congress can raise any ceiling it sets. What they may really be saying is that they do not trust Congress to be responsive to their idea of what is right, because Congress is more responsive to the wishes of the American people than the Executive may be.

Let's try informing the American people of how many immigrants will be admitted with a simple stable ceiling for all immigration, and let's rely on Congress to adjust the ceiling if such adjustment is required.

My second concern is how to make identification work. I urge you to look at the fair hiring provisions of S. 776 and H.R. 2782. They draw on the experience of the credit card systems. If Vilma Martinez, Roger Conner, or Alan Simpson goes in to buy a suit with his Visa card, we will each have our number checked, however reputable or disreputable we look, because the merchant is put at risk if he fails to check.

If the employer is similarly required to verify the social security number, which he is already required to take down, consider the benefits. The employer is protected because he has checked and verified the employee's status. Minorities are protected because the employer has to check the number or he has violated the law.

My third subject is amnesty. Any proposal to reward lawbreakers in this society carries a very heavy burden of proof because we rely so heavily on respect for law to maintain order. The Commission's rationale for amnesty is initially seductive, but ultimately unconvincing.

The argument is that amnesty will make enforcement easier, and yet Larry Fuchs said in answer to questions that 50 percent or more of the illegals who could qualify for amnesty will not apply. So then apprehended illegal immigrants will have a new claim to stay deportation that they are among the ones who could qualify who didn't happen to turn in their application.

Furthermore, it is unrealistic to think that potential illegal immigrants will not be emboldened to make the trip in hopes that the amnesty will be repeated at a future time. Amnesty complicates enforcement. It does not make it easier. That particular argument is an example of the emperor having no clothes.

If the committee does decide on amnesty notwithstanding, consider these ideas. First of all, a reasonable residence requirement. The Select Commission picks January 1, 1980. In an extraordinary stroke of hubris, it explained the reason it picked that date is that that is when it started its work. An alternative was suggested by Senator Kennedy yesterday in questions of one of the witnesses. He mentioned the fact that there were amnesties in earlier immigration laws. The 1952 act required 12 years continuous residence. The 1965 amendments which he sponsored required 17 years. A longer residence requirement than January 1, 1980, is a good idea.

Second idea. Put a limit on the number who can qualify for amnesty. This is a good way to test those who assert with such confidence that the number of people who will apply for amnesty is very small. If they oppose a numerical limit on the number who will be permitted to apply, we have a clue about how firmly they believe in their own numbers.

I have commented on three things. There should be a limit on immigration; we can make identification work; and the amnesty proposal of the Commission should be reexamined. We talked about other issues in the report in greater detail in our written testimony and I would be happy to answer questions.

We have said that the best thing about the Commission's work is that it is finished. This is not meant in any perjorative sense because the Commission has fleshed out major issues and prepared the way for these committees. But we fervently hope that you will accept this report and the cynicism with which it has been received in some quarters as a challenge, a challenge to address the major issue of reforming our immigration laws in this session of Congress, and not put it off for some future one. Thank you, Mr. Chairman.

Senator SIMPSON. Thank you very much. Indeed, we do accept it as a challenge.

[The prepared statement of Roger Conner follows:]

PREPARED STATEMENT OF ROGER CONNER

Thank you, Mr. Chairmen and members of the Subcommittees, for the opportunity to testify before you today. Before I begin my testimony, I must compliment all of you on the historic nature of this joint hearing and on the cooperation which it demonstrates between Congressional houses and political parties. Your holding this hearing illustrates the importance of immigration to America's future and the importance of solving the problems of immigration so that we may regain control of that future. I am pleased to be invited to participate today.

Today we are discussing the report of the Select Commission on Immigration and Refugee Policy. Three conclusions reached by the Commission are the most important points which emerge from a close reading of the Report, the Executive Summary, and Father Hesburgh's introduction: first, immigration to this country is "out of control"; second, "what is a serious problem today could become a monumental crisis as migration pressures increase"; and third, the American people are frustrated and angry, ready to demand radical measures unless their government responds to the immigration crisis. I would like today to give FAIR's evaluation of how well the Commission responded to the challenge which these conclusions present.

But first I would like to say that FAIR believes the American people are right. They are right that immigration is out of control, they are right that it is a serious problem which can only get worse unless our government responds, and they are right to demand such response. I am enclosing, as an appendix to my testimony, a Fact Sheet which we prepared to summarize recent public opinion polls on immigration. Two examples: a Roper Poll on June 18, 1980, asked whether the level of 400,000 legal immigrants a year should be cut—80 percent said yes; a Gallup-Newsweek poll on May 26, 1980, found 65 percent agreement with the statement that all immigration should be halted until unemployment drops below 5 percent.

What is the problem with legal immigration that rises over 800,000, as it did in 1980? What is the problem with tolerating large-scale illegal immigration? There are those who believe that immigration can never be a problem at any level, since people are the solution to problems, not the cause of problems. They say that additional immigrants themselves are wealth, are human capital, and therefore cannot cause an economic problem. They say that America is a country of immigration, and that any limitation on immigration, any control over illegal immigration, must therefore be un-American. Arguments like these are based on faith; they are beliefs that cannot be budged by factual demonstrations.

The Select Commission itself found it difficult to face squarely the problems caused by large-scale immigration. It convened a panel on the resource and environmental implications of large-scale immigration, found one dissenting scholar who did not accept the pressures placed on our nation by escalating population, and therefore came to no conclusion on the environmental or resource limits which were strained by large-scale immigration. It has expert demographic evidence which showed the implications for population growth of different levels of immigration, and then ignored the figures which were developed. It did not investigate at all the economic implications of large-scale legal and illegal immigration, beyond assuming that immigration, which had made contributions to our economic growth when we were an under-populated and underdeveloped country, would continue to be beneficial under the vastly changed conditions of the 1980's.

In other words, the Select Commission did not address the substantive issues of large-scale immigration. It ignored the implications for population growth, energy shortages, resource demands, job displacement and workplace degradation, and, as Chairman Simpson pointed out in his additional remarks to the Select Commission's report, cultural assimilation. It did not answer the fundamental questions of national interest: how much does immigration exacerbate the present unemployment problem, particularly among the poor and the young? What will it do over time to the balance between population and resources in the United States, to the availability of farmland, the production of food for us and for the hungry of the world who depend upon our exports?

Perhaps the very diversity of the Commission complicated any hope of a detailed response to these important questions. What the Commission report does is three things: first, it conducts a detailed study of existing law and comes to the conclusion that most of that law should be left intact. Second, it proposes to remove the lure of jobs for illegal immigration by making it illegal to hire illegal immigrants and by increasing law enforcement efforts. And, third, it calls for substantial increases in legal immigration along with a broad amnesty for illegal immigrants already in the country. The recommendations in these areas are far more detailed than the substantive analysis of their social and economic implications.

In the Commission's words, its proposals would "close the back door" and "open the front door a little more. . . ." Yet no case was presented by the Select Commission for increasing immigration, and FAIR believes that a much better case has been shown for reducing it. We applaud the proposals to "close the back door." They are long overdue, and we believe they should be put into practice soon. We, however, oppose widening the crack in the front door until we see whether the back door has really been closed, until we have a better idea of how many are already in the house, and until we have a good idea of how many guests for whom we haven't planned are going to invite themselves to the party.

I would like now to comment in greater detail on the principal proposals of the Select Commission, beginning with its proposals on illegal immigration.

ILLEGAL IMMIGRATION

The Commission recommended that "the law be firmly and consistently enforced against U.S. citizens who aid aliens who do not have valid visas to enter the country." We read this as an oblique criticism of the official vacillation over whether to enforce the law which contributed to the Cuban influx of 1980. Certainly, a clear statement of the Government's intention to enforce the law—for example, to impose fines and to seize vehicles and vessels used to transport illegal immigrants—is a valuable first step toward discouraging the casual flouting of the law which was widespread in that boatlift.

The Commission also urged that the Immigration and Naturalization Service (the INS) be managerially improved and be increased in staffing. A year ago, the New York Times characterized U.S. immigration policy as a "wink" at illegal immigration. We have laws, but starve the enforcement agencies so that the laws will not be enforced. The Border Patrol, to take one prominent example, is spread unbelievably thin. It attempts to monitor some six thousand miles of land frontier with about three hundred fifty agents in any shift. Now the new Administration has proposed to Congress that INS absorb 44 percent of the Department of Justice's forthcoming budget cut. If the intent is to insure the vitiation of U.S. immigration law enforcement, we are well on our way.

What level of enforcement would be needed in our Border Patrol example? Last year, at FAIR's request, the Border Patrol Supervisors Association (the BPSA) surveyed the individual sector chiefs on what manpower resources would be needed to increase apprehensions and deterrence of illegal border crossings from the present estimate of 30 to 35 percent to approximately 90 to 95 percent. The BPSA reported that if manpower were gradually increased to 5,500 and the annual budget increased by $122 million, the goal could be reached. This is, at least, the most informed speculation we have on how much it would cost to deal with this important part of the problem of illegal immigration.

This is, of course, not an overall total. The Coast Guard should be asked what it needs to effectively interdict ships bearing illegal immigrants. We also need improved control of non-immigrant entrants to decrease the number of those who overstay their visas or abuse their visa privileges. And the INS itself needs a thorough administrative overhaul.

It is not very popular, at present, to argue against any budget cut, but toleration of illegal immigration is itself directly destructive to the budget. Aside from all the social costs of illegal immigration, let me cite one budgetary cost. The Congressional Budget Office has recently computed the cost in direct federal payments for each unemployed worker at $7,000 per year. If only one million workers are displaced by illegal immigrants, that is a total of 7 to 9 billion dollars—and one million displaced workers is an extremely low, conservative estimate.

The Select Commission recommended that it be made illegal for employers to hire undocumented workers, including illegal aliens and non-immigrants who are not legally permitted to work in the United States. It also recommended that there be "some system of more secure identification" to determine who is eligible to work.

FAIR strongly endorses both recommendations. Every serious student of this issue agrees that the most effective way to stop illegal immigration is to end the easy availability of jobs in the United States to illegal immigrants. The "Texas Proviso" of the Immigration and Nationality Act must be repealed so that employers will be as responsible as all others who harbor illegal immigrants. In the past, such proposals have died in the withering cross-fire of ethnic groups who fear discrimination from employers, employers who fear prosecution if they unwittingly hire an illegal, and civil libertarians who fear that any form of worker identification is the first step toward a police state.

These interests were amply represented on the Commission, which makes the resolution of the issue which it recommended all the more remarkable: a worker identification system of some kind, perhaps functioning like the familiar call-in system used for credit cards, contains fewer hazards for civil liberties than the alternatives of continuing illegal immigration, and fully answers the potential problems of discrimination and burdens on employers.

That this particular Commission, given its make-up, could reach such a conclusion, suggests that a shift of informed opinion of rather dramatic proportions has occurred among opinion leaders in the past five years or so. The response in the press confirms this suggestion: the Washington Post editorial writers reluctantly observed that some kind of identification seemed inevitable, and the New York Times editorial called worker identification "The Missing Nail."

The Commission also made some potentially helpful recommendations to improve the judicial review process and to limit the potentially endless litigation now available to aliens subject to deportation.

I am glad to state that most of the recommendations made by the Commission with regard to enforcement of immigration law have already been written into a fair and workable law which has been introduced in this session in both Houses. In the Senate, the Immigration and National Security Act of 1981, sponsored by Senator Walter D. Huddleston (D-KY) and seven co-sponsors is S. 776; in the House, introduced by Representatives Robin Beard (R-TN) and Tony Coelho (D-CA), it is H.R. 2782.

I shall now address the Commission's recommendations on legal immigration.

LEGAL IMMIGRATION

The Commission's public statement is that it recommended "a total limited immigration number of 350,000 per year," plus 100,000 per year for five years "to reduce backlogs".

FAIR finds this statement thoroughly misleading. The Commission does not in fact recommend any "total" immigration ceiling; it decided not to set one. The figure of 450,000 (for the first five years) includes only those classes of immigrants which are now subject to numerical limitation. As to these immigrants, the proposal constitutes a 68 percent increase over current levels. Refugees, ministers, and close family members of American citizens would enter above these quotas. In 1980, legal immigration totalled over 808,000. Had the Commission's recommendation been in effect last year, legal immigration would have exceeded one million (1,000,000). This figure does not include the increase in umlimited immigration categories that will result a few years later from enlarging the size of limited immigration categories, nor does it include any calculation of the increase in immigration that would result from naturalizing of amnestied illegal immigrants.

FAIR and others, including at least one Commission member, have proposed that a total, comprehensive ceiling on all immigration should be set; that that total be set in light of the national interest of the United States, this country's absorptive and carrying capacity, so that any future increases in one category of immigration would be offset by decreases in other categories. Only in that way will we be forced to balance priorities rather than be encouraged to yield to one pressure group after another calling for just a small increase in immigration for one group after another.

The Commission reviewed the current preference system exhaustively, and concluded by essentially endorsing it. It recommended a separate quota for "independent" immigrants, and assigned most of the proposed increase in quota numbers to that category. Another increase in immigration would follow from the Commission's recommendation to exempt adult unmarried children and grandparents of citizens from numerical limitations.

Perhaps, however, the most important preference system decision was to preserve the present fifth preference category for brothers and sisters of American citizens. The Commission's staff had recommended that this category be abolished. FAIR believes that priority should be given to immediate nuclear family members of American citizens and legal immigrants, but it also opposes the continuance of fifth preference. This category is the key to "immigration chains" which multiply the number of potential immigrants for each quota immigrant admitted. An immigrant who is naturalized may petition for his siblings to enter the U.S. under that preference; they in turn may bring their spouses, either under their own petitions or later under the second preference category; their spouses may in time be naturalized and bring in their parents and siblings. And so on. This "immigration chain" is carried on in the name of "family reunification." "Family reunification" is an appealing slogan, but the admission of married siblings of American citizens inevitably separates a family in the process of "reunification" within the United States. Migration itself separate families, and those who migrate do so understanding that. "Family reunification" of the nuclear family is an humanitarian goal for our immigration system; expanding that reunification to extended, multi-generational, multi-family "families" is not.

With respect to refugees, the Commission decided to endorse the Refugee Act of 1980 and the way it had been administered within its first year of operation. A minority opposed such a sweeping endorsement and pressed particularly for reform in the present provisions which give the President unlimited authority to admit refugees after perfunctory "consultation" with the Judiciary committees. The minority wanted a new look at the definitions and standards used to define refugees, and wanted closer Congressional responsibility and authority.

On the mass arrival of asylum claimants (as in the Cuban flotilla a year ago), the Commission staff concluded that such influxes will happen again, that there is no reason to believe that this was a unique occurrence. But the Commission, instead of designing measures to prevent such movements, focused on means to accomodate them. It called for an interagency coordinating system, contingency planning for handling, planning for processing centers, and various methods to evaluate and adjudicate asylum claims. It did not offer any guidance on how to deport illegal immigrants when, as in the case of the Cuban entrants, their home countries will not take them back.

FAIR believes, as did at least one of the Commissioners, that Commission approached here a very critical issue, and backed away. Congress, in 1980, raised the annual refugee quota from 17,400 to 50,000. Within a month, using powers granted to him in the Refugee Act, the President decided to raise that figure to 232,000. He, through the Attorney General's parole power which had supposedly been limited in the Refugee Act, later regularized another 125,000 Cuban and 24,000 Haitian illegal immigrants as "special entrants." For FY 1981 to Administration set a target of 217,000 refugees. The Commission abdicated its responsibility when it failed to address the impact of such a breathtaking acceleration of refugee admissions or to advise us on how to deal with the new phenomenon of mass, open illegal migration into the U.S.

FAIR does not oppose a quota of 50,000 for refugees, and it believes that the President should have authority to act quickly in emergencies to admit more refugees, but only within the total immigration ceiling, only by reducing other categories of immigrants. FAIR believes that Congress should not delegate its authority over immigration levels to the President, and believes that positive expressions of Congress's will should be a requirement for any increase in the annual refugee and immigration quotas it sets.

The Commission proposed, also, the "legalization of undocumented aliens" in the United States as of some date prior to January 1, 1980. It said that such an amnesty should come only after the development of effective controls on illegal immigration, but it left the details of such a program to Congress.

It is premature to discuss amnesty at this time. The Commission proposes to legalize a group of illegal immigrants without even a rough idea of the numbers or the costs involved. This proposal would add millions to the permanent U.S. population directly. (The Commission's own very conservative figures suggest a range of 1.5 to 3.6 million people would request amnesty.) Moreover, this proposal would permit additional millions of family members to enter as quota immigrants and, once the illegal aliens are naturalized, as non-quota immigrants. Unless future illegal immigration is brought under control—and there is no assurance of such control—the process will generate further illegal immigration, and future amnesties. Australia had three absolutely final amnesties for illegal immigrants in the past twenty years. One of my associates had already been asked, on the behalf of an Iranian ex-student, how deportation can be stayed until the amnesty is enacted.

We believe that amnesty can be only the last step of this reform of immigration law. After the dimensions of the problem are known, after effective control over illegal immigration is in place, and when criteria have been established for case-by-case decisions, then illegal immigrants who are firmly established in the United States may be offered amnesty.

AFTER THE SELECT COMMISSION

The Heritage Foundation, one of Washington's new conservative think tanks, published Mandate for Leadership soon after last November's election. The book is an agency by agency, issue by prescription for a new, conservative, Reagan administration. When they reach immigration, the otherwise self-confident authors pause. "There is no clear 'conservative' position on immigration, and no clear 'conservative' solution," they say. "Clearly, an approach which would be politically safe in the short-term would be one of continued study and examination." It is not surprising that President Reagan's first act on immigration policy was to follow the examples of President Ford and President Carter: he appointed a committee to study the issue.

There is one major difference however. President Ford's Domestic Policy Council reported at the end of his administration. President Carter's Interagency Task Force reported two years into his term, and his Select Commission on Immigration and Refugee Policy reported after the end of his term. President Reagan's Interagency Task Force is scheduled to report this month. This change of pace illustrates the best single thing about the Commission's work: It is over. I do not mean this an any perjorative sense. It is simply that the end of the Commissin's work is a signal that reform must now take place. The studying has been done. The hoped-for "conflict free" solution has not been found. The situation, both in legal and illegal immigration, is deteriorating rather than improving. And there is nothing to suggest that we shall know more about "solutions" in two years or in four years than we do now. At this stage, there can be no more calls for study prior to Congressional action.

I wish to end as I began, by noting the historical significance of these joint hearings. For these hearings, also, are a signal that we must act now, that Congress is ready to act, that the public is ready for action. These Subcommittees will soon be evaluating the legislation and other proposals which will emerge from the Commission's work. The Immigration and National Security Act, S. 776 and H.R. 2892, is the first major bill which will come to your attention. I hope that, as you consider it, you will have in mind the analysis made by Senator Simpson in his remarks in the Commission's report:

"Should the United States' immigration and refugee policy be evaluated by the national interest standard of what best promotes the welfare of the majority of Americans and their descendants? Or by the humanitarian standard of what best promotes the welfare of those persons living abroad who are less fortunate than most American citizens . . . (or of) a relatively few individuals living in America who wish to bring to this country relatives living abroad?"

What is at stake in this debate is nothing less than the quality of life which our children will enjoy. It will accomplish little if we sacrifice their future to pay for unlimited immigration today—for, as the Commission so rightly concluded, we cannot solve the world's overpopulation, underdevelopment, and refugee problems through migration. Paradoxically, the long-range interests of the majority of people in the source countries are better served by limitations on immigration to the United States than by the status quo. For migration to the U.S. frequently consists of the most ambitious, the trained, the skilled people from the sending countries. And, to the extent that elites in source countries consider migration and "escape valve," either for their troubled masses or for themselves, it can only reduce the pressure for needed social and economic reforms which address the fundamental problems which they face.

Every generation, an issue emerges in this country which tests our basic ideals. Civil rights, the Vietnam War, and environmentalism were such issues. Immigration may well be the issue through which we redefine ourselves, and understand better the meaning of America, in the age of limits. In a sense, the Commission report is a signal that this debate, now long overdue, is about to commence. May the best ideas win.

REPLY TO JULIAN SIMON BY ROGER CONNER, EXECUTIVE DIRECTOR, FEDERATION FOR AMERICAN IMMIGRATION REFORM [FAIR]

Professor Julian Simon, of the University of Illinois at Urbana, is an economist with an unconventional view of economics, resources and the environment, and the world. As expressed in the June 1981 issue of "The Atlantic Monthly," he believes that: "Human ingenuity, rather than nature, is limitlessly bountiful. I believe that with knowledge, imagination, and enterprise, we and our descendants can muster from the earth all the mineral raw materials that we need and desire, at prices that grow smaller relative to other prices and to our total income. In short, our cornucopia is the human mind and heart. So it has been in the past, and therefore, I believe, so it is likely to be in the future."

Few of us subscribe to Professor Simon's vision of limitless bounty, either of the earth or of human ingenuity. But as we consider his views on immigration, we should understand that they result from his world view, which is that there is no limit at all to the number of people that the United States, or indeed, the earth can support without any diminution of standards of living. If we believe that there are such limits, then we must take his views with a grain of salt, realizing that he believes there is no such thing as overpopulation or as population strains on natural and social resources.

As in all other things, there are both costs and benefits in immigration. These costs and benefits are both human and economic, and they vary both in degree and in kind with the volume of immigration. Immigration to the United States, which is positively beneficial to our country at 10,000 people per year or at 100,000 people per year, can be a tremendous burden to the country at 1,000,000 people per year or more.

FAIR is concerned about immigration precisely because it is out of control. Estimates of the total legal and illegal immigration we had in 1980 run as high as 2 million. We take for permanent resettlement more immigrants and refugees than the rest of the world combined, and more than ever before in American history. Annual legal immigration is three to four times higher than it was just fifteen years ago, and any measure we have for illegal immigration shows it to be ten times higher than it was in the early 1960's.

Professor Simon's study of earlier immigrants to the United States, for the Select Commission on Immigration and Refugee Policy, was summarized in the "Wall

Street Journal" on February 26, 1981, under the title "Adding Up the Costs of Our New Immigrants." I would never argue that Professor Simon's study did not find good news. Its conclusions were good news for those of us who still believe in the American dream. Immigrants worked hard and got ahead. Their family earnings reached those of the average native family within five years of their entry into the country. They paid taxes which, he concludes, more than paid for the governmental costs of providing services to them.

But those of us concerned with American immigration policy must ask several hard questions about Professor Simon's study. FAIR's reply, raising some of those questions, was printed by the Journal on March 11, and I would like to quote it here:

"Julian Simon's argument is: immigrants, both legal and illegal, are an economic bargain because they pay more in taxes than they receive in benefits. As proof, he cites a study he made of immigrants who entered between 1950 and 1975. The people he studied are, of course, not the "new immigrants" at all: they were considerably more skilled and educated than the new immigrants, they arrived during a period of extremely rapid growth of the economy, and they were greeted with markedly lower levels of social benefit programs than today.

"In measuring taxes paid by immigrants against social and governmental costs for immigration, Mr. Simon is careful to exclude most governmental costs from his calculations, claiming that they are independent of the size of the population. Using his reduced figures for governmental costs, not only immigrants, but all Americans were large net contributors to the budget during the '50's and '60's, and there must have been huge tax surpluses during these decades of which we were not aware. Obviously, the only accurate comparison of costs would include proportional shares of highway projects and aircraft carriers, not exclude such costs from the immigrants' side of the ledger.

"The burden of Mr. Simon's argument, however, is that immigrants are younger than the population as a whole, and therefore an economic asset. The obvious conclusion is that society should be structured like a Ponzi pyramid, with ever-expanding, ever-larger generations, and that the model for a healthy economy would be a country like Mexico, with half its population under 15 years of age. One cannot argue that pumping up the base of the age pyramid with young immigrants is a long-term program for economic growth, unless one is prepared to argue that countries with high population growth rates are economically healthier than countries with low ones—which is directly contrary to fact."

To repeat, Professor Simon studied immigrants in the United States as of 1975—meaning that the immigrant's family who had been here for five years was one that entered before 1970. The immigrant family who had been here for ten years had entered before 1965. Data from these years may be fundamentally in error if applied to the realities of 1981. Earlier data seem unambiguously to support the conclusion that traditional, relatively moderate levels of immigration produce more benefits than costs for our country. Would data on the current, unpredecedentedly high levels of immigration point to the same conclusion? Or would it suggest that we are beginning to encounter the costs?

As we asked above, are the immigrants of 1981 the same as those of the 1960's? And, in a parallel question, is the United States the same as it was in 1965? Will an economy with nearly 8 million jobless workers absorb 2 million new immigrants a year as easily as an economy with 4 million unemployed absorbed 400,000 new immigrants yearly? Professor Simon assumes that the answer to both these questions is yes.

Professor Simon also assumes that the equation of costs and benefits is the same for legal and illegal immigrants, with perhaps some preference for illegal immigrants because they receive fewer governmental benefits. But what is the impact of illegal immigrants on our economy? Then-Labor Secretary Ray Marshall stated in 1980 that if there were no illegal immigrants in the U.S., unemployment would fall below 4 percent. Admittedly, it is true that some illegal immigrants take jobs that, because of low pay or bad working conditions or both, native-born Americans would not accept. But the presence of illegal immigrants also depresses labor markets, makes those exploitative conditions possible through the acceptance of wages lower and conditions worse than would otherwise be the case. And the availability of a cheap pool of illegal alien laborers slows the conversion to capital-intensive means of production which modernize and improve our economy. We are not as ready as Professor Simon to say that these conditions enrich employers, so that on balance the total wealth of the country is not affected.

We are convinced that illegal immigrants have a dramatic impact on the labor market in many parts of the country and that there is no justification, economic or otherwise, for allowing this illegal immigration to continue. The costs of legal immigration (including our refugee program) tend to be up front and public, thereby helping to regulate the process, while the benefits come later. With illegal immigration, however, the apparent benefits (that is, cheap labor) are up front, contributing to a widespread laissez faire attitude toward illegal immigration, while the substantial economic and social costs are postponed.

The social costs of immigration must also be examined with great care. Professor Simon found that "immigrants benefit natives through the public coffers by using less than their share of services and paying more than their share of taxes." Again, we are not ready to accept this assertion unquestioningly. Did the U.S. have available in 1965 the wide panoply of social services that it has today? Is the experience of an earlier year, with a few thousand refugees, instructive for a later year in which over 200,000 refugees come to the United States? As illegal aliens are found to be eligible for more and more social services, including federal housing subsidies, free bilingual public education, and health care, will the balance of tax payments and government benefits remain in the favor of the government? And, if it does, are we comfortable with receiving a favorable balance at the expense of exploiting rightless individuals in the United States? The documented case of one illegal alien in Colorado demonstrates just how far Professor Simon's description may be from the reality of 1981. With all the exemptions and credits he was able to substantiate in his income tax return, this illegal immigrant actually received back from the federal and state governments $300 more than he paid in during the tax year (exclusive of social security contributions).

As dramatic as this case may seem, it only begins to scratch the surface of the implications and consequences of immigration at existing levels, and of our failure to articulate a coherent, enforceable policy to deal with it. We are, save for Professor Simon, increasingly sensitive to the limitations of our resources and to the impact of population growth on these finite resources. But the fact that immigration now accounts for almost 50 percent of our annual population growth has barely begun to be recognized. Ideally, a national immigration policy which we would support would deal with the link between population growth from immigration and the social, economic, and resource, challenges we are certain to face for the rest of this century.

Conditions in the world are such that the demand to be allowed to immigrate to the United States can only grow. There is no time to lose in setting an immigration policy which is in the national interest of our country. Our aims should be to return legal immigration to the moderate numbers that characterized it throughout America's history and to stop illegal immigration, to end the uncontrolled illegal immigration we experienced throughout the decade of the 1970's.

The first step toward these aims is for us to recognize that, contrary to conventional wisdom, the costs of immigration at its current levels and under our current conditions have outstripped its benefits, and that the cost-benefit disparity is growing at an alarming rate.

Senator SIMPSON. Next, Gladys Alesi please.

STATEMENT OF GLADYS E. ALESI, EXECUTIVE DIRECTOR, AMERICAN IMMIGRATION AND CITIZENSHIP CONFERENCE

Ms. ALESI. Thank you, Mr. Chairman. Understandable and reasonable are beautiful words and laudable goals as far as I am concerned.

My name is Gladys Alesi. I am the executive director of the American Immigration and Citizenship Conference. Its work is 51 years old. It is a coordinating organization which brings together some 60 nonprofit organizations concerned with maintaining a humanitarian and nondiscriminatory immigration policy, a reasonable, a sound policy, in keeping with the best traditions of the United States.

We represent religious, labor, welfare, ethnic, and civic organizations. Among our membership, the United States Catholic Conference, the National Council of Churches, the American Jewish Committee, the United Automobile Workers, the United Steel Workers, the International Ladies Garment Workers Union, the American Council for Nationality Service, HIAS, the Lutheran Immigration and Refugee Service, the American Committee on Italian Migration, the Polish National Alliance, the National Council of La Raza, and many more. We cover the waterfront.

What does AICC do? AICC keeps its member organizations and others informed about developments in the immigration field. It watches the legislative scene. It suggests needed changes in the law. It alerts its members and others to possible dangers. It encourages joint action. It promotes public education. It makes needed studies. It works for immigrant adjustment and good interethnic relationships.

What do we believe? An enlightened immigration policy is one of the foundations and wellsprings of American democracy. Immigration has brought to our shores a vast wealth and variety of people. Today as many Americans look back to Ellis Island as to Plymouth Rock. It is important that this vital inflow continue.

Keeping our doors open within reason to the peoples of the world is an all-important way to renew and maintain the forces and values that have made the United States the great democracy and world leader that we are.

Now I told you that our work was 51 years old. AICC was started in the 1920's when Congress enacted the first national origins quota laws, with their many restrictive and discriminatory provisions. These and the depression reduced immigration during the 1930's and 1940's to an average of some 70,000 a year.

One of AICC's first objectives was to eliminate this discriminatory feature and the exclusionary Asia Pacific triangle, and to restore our humanitarian American tradition. This effort succeeded.

The maintenance of such a policy, we believe, is a tremendous hope for our country and for mankind. Only a nation which traces its origins to all people and which keeps its doors open to the world can supply the leadership and drive necessary to develop the influence, the understanding and the sense of world community that will make today's wars and conflicts unthinkable and create a new era in our many-nationed world.

During the last several years, the United States has been very generous, some people say overgenerous, in admitting refugees and immigrants from all over the world. How generous it should be at any particular time is a question, however, that must depend in part on its ability to absorb newcomers, to absorb them effectively, and to our own needs and conditions.

AICC and its member organizations are still studying the recommendations of the Select Commission. We will want to study them further in light of the report and the recommendations of the President's task force. We consequently ask the privilege of submitting to your subcommittee at a later date such specific recommendations as we and our member agencies have. Thank you.

Senator SIMPSON. Thank you very much. Now Phyllis Eisen of Zero Population Growth. Please.

STATEMENT OF PHYLLIS EISEN, DIRECTOR OF IMMIGRATION PROGRAM, ZERO POPULATION GROWTH

Ms. EISEN. Thank you. I also want to compliment both chairmen on a truly excellent set of hearings, very balanced and with very good questions.

Good afternoon. I am Phyllis Eisen of Zero Population Growth. Thank you for the opportunity to testify on behalf of ZPG before such an important gathering. ZPG is a nonprofit organization supported by people from across the country who are concerned about population growth. We are here today because of that concern, because of our appreciation of the significant impact immigration has on population growth, because we believe in continuing immigration for this country but with limits, and because we believe the United States needs an explicit population policy that aims at population stabilization at the earliest reasonable date.

We are particularly pleased to be able to respond to the report of the Select Commission on Immigration and Refugee Policy. From the beginning, we supported this Commission, in its creation, in its work and in its public recognition. We were convinced of the importance of a joint congressional, administration, and public examination of refugee and immigration policy.

We applaud the Commissioners for their hard work. I had the opportunity to watch many of the Commissioners sit through long days and evenings of testimony all around the country, and I was impressed by their concern and dedication.

We also applaud the report in its attempt to bring before Congress and the President a comprehensive approach to immigration and refugee policy.

ZPG has been involved in the immigration issue for years because of the impact that immigration has on population growth in this country. We have a broad range of concerns and interest in the formulation of national immigration policy. We hope to be able to respond to these concerns in subsequent hearings, but today we would like to confine our remarks to the section of the report that links demographic impact to immigration policy.

Before I begin I would like to clarify one point. On Tuesday, Father Hesburgh said we have reached zero population growth in this country. That is not true. Today, the American population exceeds 228 million and is growing by an additional 2 million or more each year. The United States has not reached zero population growth. Nor is it likely in the next several decades, even if we had no immigration.

Natural increase, the excess of births over deaths, as well as net immigration, contribute to that 2 million increase. Although each American woman is bearing on the average fewer children than women did in the past, the total number of babies born each year is still on the rise. The high number of women born during the baby-boom generation, who are now in or entering their childbearing years, is contributing to an increase in the birth rate. Last year 3.6 million babies were born, an increase of 4 percent over the year before. That is up 16 percent since our low point in 1973, when 3.1 million babies were born.

The Select Commission was mandated to link demographic impact, among other policy issues, to the formulation of immigration policy. We are disappointed in the results as articulated in the final report. The analysis was inadequate and misleading for the following reasons.

One, the report reflected a misunderstanding of the impact of immigration on population growth. It maintained that fertility is a greater determinant of population growth than immigration, a true statement. But it was taken out of historical context and therefore misleading because, we do not control fertility in this country and it is unlikely that we ever will. The only part of population growth that we control is immigration. That makes immigration a very significant factor in population growth.

Two, at this point in our demographic history, with fertility below replacement level and immigration high and ever increasing, immigration accounts for, given various levels of illegal immigration, between 40 and 50 percent of our population growth. Given continued low fertility, any increase in immigration will have a proportionately greater impact on growth.

The report confined itself for the most part to the issue of growth rather than an analysis of demographic impact, both on a national and local level. Demographic impact occurs not just when people are born and die and migrate, but when they age, marry, divorce, or settle either temporarily or permanently.

The lack of demographic analysis of the regional and local impact of immigrants, both legal and illegal, was particularly unfortunate. Immigration policy is made on a national level, but immigrants live in specific localities, and different areas are disproportionately impacted upon. If we are truly going to plan for people in this country we must have a clear understanding of how to meet the needs of all of our people.

The report claimed that there was no agreement about the impact of immigration on resources in the environment. This was an unrealistic conclusion. At the one and only consultation held by the staff of the Select Commission, a consultation which I attended, all but one of the participants agreed there were a variety of impacts.

Finally, we are disappointed that the report did not urge the Congress to begin a national debate on goals about growth for this country. While it was not the Commission's job to establish these goals, it would have done well, in light of its conclusion that there were no agreed upon goals, to urge a discussion of where we are going in this country and what we want to look like when we get there.

In light of that, I would like to repeat a remark made by Secretary Bell in a seminar I attended on Monday. He said if you want to get to Red Gap by sundown, you had better know where Red Gap is and the best way to get there.

I agree wholeheartedly. I suggest the same goal for Congress as it begins its deliberations on the best immigration policy for this country that will not only serve our needs today, but into the 21st century.

ZPG has a number of recommendations that we would like to offer to this Congress. They are included in the full text of my testimony. I will be glad to discuss them during the time set aside for questions.

Thank you again for this opportunity to testify.

[The prepared statement of Ms. Eisen follows:]

PREPARED STATEMENT OF PHYLLIS EISEN, PUBLIC AFFAIRS DIRECTOR, ZERO POPULATION GROWTH, INC.

Good afternoon. I am Phyllis Eisen, Public Affairs Director for Zero Population Growth, Inc. I am delighted to have the opportunity to testify on behalf of ZPG. These joint hearings clearly indicate the magnitude of the issue and I commend their Chairmen for their wisdom and foresight. ZPG is particularly pleased to be able to publicly respond to the Final Report of the Select Commission on Immigration and Refugee Policy. For more than three years, ZPG has worked vigorously to support the Commission—in its creation, in its work, and in its public recognition. We were convinced of the necessity and urgency of a joint Congressional, Administration, and public examination of immigration policy.

During the past years, we met with many of the Commissioners, spent a great deal of time with the staff, travelled to 10 of the 12 public hearings and attended the special consultations held here in Washington. The Commission had an ambitious and vital task—to link together all of the immigration and refugee related areas that had been previously looked at in isolation to one another: health care, social services, education, demographic impact and foreign policy. The Commissioners and their staff were plagued constantly by political, budgetary and time constraints. We applaud their efforts to recommend to the President and Congress a comprehensive approach to immigration policy reform.

As Congress begins to examine the findings and recommendations of the Select Commission, the question arises, "What if the Commission did all this work, listened to all those witnesses, and then its recommendations are shelved and never heeded?"

This is a real concern. It has happened before. I would like to begin by reminding the Subcommittees of what other official bodies have reported over the past decade.

In 1972, the 24-member President's Commission on Population Growth and the American Future observed: "Historically, immigration has contributed profoundly to the growth and development of this country." [1] It recommended that "immigration levels not be increased and that immigration policy be reviewed periodically to reflect demographic considerations." [2]

In 1976, President Ford's Domestic Council Committee on Illegal Aliens noted: "If both fertility and illegal immigration continue at current levels, all growth in the U.S. will derive from immigration by the year 2035." [3] The committee recommended, "The illegal immigration issue must be treated in the context of population growth and the long-term effects on birthrates in the U.S." [4]

In 1978, the 16-member House Select Committee on Population reported: "Due to our current low birth rate, immigration to the United States has become an increasingly important factor in our population growth." [5] It concluded: "Decisions must be made about the future size of the U.S. population, and population policy cannot be made without a corresponding immigration policy." [6]

In 1979, the staff of the Interagency Taskforce on Immigration Policy reported: "The primary significance of immigration may be its contribution to population growth." [7] Yet, "U.S. immigration policy is not fashioned to maximize the positive impacts of immigrants. Unlike other major immigrant-receiving nations, we have not shaped immigration policy to assist in the attainment of national economic or demographic goals." [8]

And in 1981, in the report to the President, "Global Future: Time to Act, Report to the President on Global Resources, Environment and Population," the Council on Environmental Quality, the Department of State observed . . . despite the involvement of individual government agencies in population and family planning, the United States still lacks an explicit domestic population policy". They recommended, "The United States should develop a national population policy which addresses the issues of population stabilization . . . and just, consistent enforceable immigration laws . . ." [9]

The fate of the recommendations of the Select Commission on Immigration and Refugee Policy is in the hands of the Congress as it addresses the challange of designing a humane, rational immigration law to meet the needs of today and guide us into the future. The kind of policy that is written and the way it is implemented could change the face of this nation, the way we see ourselves, and the way we are viewed by the rest of the world.

It is ZPG's concern for the future well-being of the nation, our conviction that we must commit ourselves to setting population goals and planning ahead for population shifts, and our appreciation of the significant contribution of immigration to population growth that brings us here today.

The Select Commission on Immigration and Refugee Policy was directed to formulate the best possible immigration policy. We at ZPG feel this cannot be done in the absence of an overall population policy which includes goals about growth. We believe that goal should be population stabilization at the earliest reasonable date. The 1972 Presidential Population Commission concluded ". . . we have found no convincing arguments for continued national population growth" [10] Demographer Ansley Coale has stated more recently, "We must have a stationary population eventually and in many ways sooner is better than later." [11] He was very clear however, that ". . . the path to a stationary population leads to the need for very substantial social adjustments, some of them painful, that we must foresee and for which we must start to prepare." [12] Dr. Leon Bouvier, Director of Demographic Research and Policy Analysis of the Population Reference Bureau and former Senior Staff Demographer for the Select Commission stressed in a recent monograph, "Determining the "best" immigration policy can hardly be accomplished without an overall population policy which includes at least a tentative "optimum goal" both as to population numbers and growth rates." [13]

Decisions must be made in this country about an explicit policy that aims at zero population growth at some future time. Once that is decided, immigration levels can most rationally be set in the context of that national population policy.

Limits will have to be decided upon in order to reach these goals, and immigration limits are part of that decision making process. Given present low fertility in the United States, less than two children per woman, and if total net immigration into the U.S., legal and illegal, is over one million per year at the present time, then immigration today is contributing to least 40-50 percent of population increase. [14] Authoritative demographic analysis has indicated, however, that we will not reach a stabilized population until well into the next century, even if we limit our immigration numbers to a net of 400,000 per year, if domestic fertility remains below replacement level. [15]

The history of immigration law has been a series of choices about limits. Virtually every nation in the world today attempts to limit its immigration. For ZPG, the issue is not, "Should the United States continue to have immigration?" We believe the country should plan for continuing immigration. Immigration has enriched this country socially, economically and culturally. It will continue to do so. The questions we must all ask are:

What purposes should future limits to immigration serve?

How should we should we chose those limits?

Limits are not unique to immigration policy. We are a country known for pursuit of individual liberties and freedoms. But we have avoided the need for limits in our lives and actions. Our liberties and freedoms today are based on our respect for personal, social and legal limits. In a society governed by laws we make choices every day about limits on personal and collective action as well as their enforcement. In a democratic society those limits must serve the well-being of the society as a whole and the improved opportunities of all its members.

ZPG believes there are limits to out population growth potential. If population growth is left unchecked either in this country or in the rest of the world, a good quality to life for all is lost. Limiting population growth is not an end in iteself—it is a means for a better future.

ZPG has a wide range of concerns about immigration and refugee policy. We have been involved in this issue for many years. We have learned a great deal and hope we have contributed a useful perspective to the debate. ZPG supports the overall goals of the Select Commission for a just, humane, enforceable immigration law. In addition, we support "a comprehensive approach designed to bring large scale illegal or undocumented immigration under reasonable control, which would go far toward promoting several desirable goals at once; assuring reestablishing the plural mix of immigrants and refugees of which most Amerians are justifiably proud; and reversing the widespread belief that American immigration policy is out of control. By so doing, it would represent the single most important contribution toward a rebirth of America's historical commitment to a liberal immigration policy." [16]

However, though there are numerous areas of the Report of the Select Commission upon which we would like to comment, for the purposes of this hearing we will confine ourrselves to our own area of expertise, demographic impact and population policy. We hope to have the opportunity to address our additional concerns before the Congress in the future as it examines the whole range of policy options relating to the reform of our immigration laws.

Note: At the end of our statement and recommendation we have included material explaining zero populaton growth and presenting the argument for a national population policy. We consider it absolutely necessary for a fruitful discussion of immigration and refugee policy.

ZPG'S RESPONSE TO THE REPORT OF THE SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY

The Select Commission, established by Public Law 95-412, was mandated to "conduct a study and analysis of the effect of the provisions of the Immigration and Nationality Act (and administrative interpretations thereof) on (A) social, economic, and political conditions in the United States; (B) demographic trends; (C) present and projected unemployment in the United States; and (D) the conduct of foreign policy."

The inclusion of "demographic trends" we heralded by ZPG as an important leap forward in moving toward comprehensive reform of our immigration law. We applaud the Congress for including this vital link in the formulation of this Commission.

Why is this important? According to Dr. Bouvier, "Immigration policy in particular should not be considered without looking at the demographic impact of immigration on U.S. population. How will U.S. population size vary according to different levels of immigration? What impact will immigration have on the labor force of the future; on school enrollments; on the ethnic makeup of the population? Only after reasonable projections have been made can we make reasonable plans for the future on a wide range of activities and programs. [17]

For ZPG, an organization that has advocated "planning for people" for more than 12 years, believed demographic trends should have been an important consideration for the Select Commission. We are, unfortunately, disappointed in this part of the final report of the Commission. Its response to its mandate to include demographic trends was summed up in 19 lines. Titled, "Demographic and Ecological Impact," there are three main points in this summary:

(1) "There is no agreement at the present time as to what is the most desirable population for the United States." [18]

(2) "The future size and composition of the U.S. population is far more sensitive to variations in fertility than to changes in the level of immigration." [19]

(3) "There are no conclusive answers to the question of how various levels and kinds of immigration affect the environment, resource availability and U.S. society." [20]

This is the sum of the discussion of demographic impact of immigration. The lack of demographic analysis throughout the report, is particularly unfortunate. This section reflects a misinterpretation of the issues. "Demographic impact" essentially was deferred for some future time when goals can be decided upon and consensus can be reached. This in itself was misleading. "Demographic impact" occurs wherever people move and settle and have an affect on many other policy areas, including housing, land use, economic productivity, and health care. In confining itself to growth as the only demographic phenomenon worthy of consideration the Commission misjudged the nature of demographic impact. Growth is only the most obvious of demographic phenomena. What about internal migration? What about specific population density in regions where the ecology cannot sustain that population? What about age/sex structure? A clearer analysis of the issue might have shed more light for the Congress and the public about the significance of demographic change resulting from any changes in our immigration laws.

(1) "There is no agreement at the present time as to what is the most desirable population for the United States." It is true there is no agreement about population goals for the U.S. It was not the job of this Commission to suggest a goal. However, it would have done well to have urged Congress to begin a dialogue on goals for growth within which immigration limits could be set. It could have examined alternative demographic paths so that the Congress and the public could make better judgments about limits to immigration. Options for growth should have been included as a necessary adjunct of a discussion of demographic impacts, both now and in the future. Policymakers and all Americans need to become more aware of population-related policies and what they mean for the future size and composition of the nation. If Americans want more immigration, and more births and if they want to continue to grow on forever—that choice is theirs. However, they cannot make an informed choice without knowing what the consequences of growth are for them today and in the future.

(2) "The future size and composition of the U.S. population is far more sensitive to variations in fertility than to changes in the level of immigration." While based on fact, the Commission's interpretation of this statement is misleading. As was stated before, because fertility is so low at this time in our history, and immigration levels high, net immigration can account for 40-50 percent of our annual population growth. The impact of fertility on population size is clearly stronger than the impact of migration, but only when put into the proper context. However, "because fertility is both important and volatile the levels of immigration, as well as fertility,

must be monitored constantly in order to maintain a balance between an uncalculable variable—fertility—and a controllable variable—immigration. [21] We do not control fertility in this country—nor does it seem likely that we ever will. Decision for smaller families has been a voluntary one for the American people, as it should be. The only portion of our population growth that can be controlled is immigration. The very fact that fertility is so crucial and so unpredictable and so uncontrollable makes immigration limits and our ability to control that portion of our growth even more significant.

An example will help to explain. A very slight change in fertility results in a large difference in total population. An increase in the average number of children per family by just two-tenths of one percent would lead to a difference of 7 million people in the 20 years from 1980 to 2000 and 60 million in 100 years (1980 to 2080).

But that is just taking fertility into account. If we combine a fertility assumption of 1.8 births per woman, and net immigration of 750,000 per year—the result would be 100 million additional people. Higher levels of immigration would, of course, yield still greater totals, despite very low fertility. [22]

This assumption of a continuing 1.8 fertility may be unrealistic. Some demographers foresee an increase in family size in the near future, perhaps even a new "baby boom". [23]

Should fertility climb to 2.0 by 1985, not an impossibility, and if net legal immigration were 500,000 a year—a realistic estimate—the 300 million mark would be reached by 2030 and by 2080 the population would be 335 million or 110 million more than at present. That is nearly a 50 percent increase.

And finally, if fertility rises once again above replacement level to 2.2—population growth would never cease. Even with immigration limited to 250,000 net per year, the population would reach 264 million by 2000, 383 by 2080. Any additional immigration would lead to a doubling of U.S. population by 2080. [24]

The above examples are only an illustration of the volatile nature of population growth. The numbers themselves are meaningless without an analysis of what they mean in terms of our daily lives. The choices we make now will have profound effects on our future. The issue is not just if we will reach zero growth in this country, but when, and how many people will there be when we get there? It is most likely that fertility will remain negative (below 2.0 replacement level) in this country and we will reach zero population growth. Dr. Bouvier addresses this issue and says, "As long as natural increase is negative eventually the population growth rate will also become negative before leveling off at some stationary point in the more distant future." [25] The issue before policymakers is how distant and how large.

We are facing a time of potential increases in immigration to this country. You will note that in all of the examples given, illegal immigration is not mentioned. It is difficult to count in an unknown variable. Yet it exists and though we do not know the numbers, it is obviously significant and growing. We are facing unknown refugee pressures in the coming decades. These potential increases in immigration combined with continued national low fertility makes immigration an increasingly significant portion of our population growth. To judge it outside of the present historical context is a disservice to all Americans. [26]

(3) "There are no conclusive answers to the question of how various levels and kinds of immigration affect the environment, resource availability and U.S. society." During the one and only consultation of experts in this field (July 20, 1980) most of the participants agreed that there were a variety of resource and environmental impacts from different levels of immigration. The Report from the Select Commission called this a debate and decided that there were no "conclusive answers" and gave as their reason for dismissing the issue as "there is little systematic theory or empirical research on the relationship of various levels and kinds of immigration to world resource use and abuse. [27]

We direct Congress to an Executive Summary done by the Population Reference Bureau for the consultation on natural resources says, "The population increase caused by immigration pushes the limits of U.S. natural resources." (The full text of this summary of the expert witnesses is enclosed in the footnote.) [28]

Finally, and perhaps the most important omission of this discussion of demographic impact was that of the demographic significance of the regional nature of immigration. Immigration, whether from legal admissions, refugees or illegal entrants has regional and local impact. Immigration is a national policy decision but immigrants are dealt with on the local level and the impact is not evenly distributed. Different regions and different states are affected in a variety of ways. Immigrants have impact where they live and they tend to cluster into areas where they are most comfortable, where there are similar neighborhoods and a congenial atmosphere. This a only natural. But because of that very demographic phenomenon certain areas are affected in very special ways. Immigrants of all types have special needs—health care, both mental and physical, special education and job training needs and often special language needs. The locality where they live must provide these needs. And according to an upcoming study by Dr. Leon Bouvier of the Population Reference Bureau, there are five major areas that attract immigrants, New York, Illinois, Florida, Texas and California. Three of these five areas are receiving not only vast numbers of immigrants, refugees and illegal immigrants, but are also facing mass in-migration from U.S. citizens who are moving from the "snow belt" to the "sun belt" in search of better lives. Dr. Bouvier notes, "If present fertility and immigration patterns remain as they are and if future immigrants settle in the same sections of the country as recent immigrants, then to give just one example, by 2080 California will have two-thirds of its population consisting of immigrants and their decendents who are post 1980." [29] Immigration is a regional and local demographic phenomenon. This should have been stressed by the Report of the Commission. It is not just growth that is at stake, but what kind of growth and where and how and if a particular locality can best meet the needs of that growth. Our policies must be designed with "planning for people" in mind.

ZPG'S RECOMMENDATIONS TO THE CONGRESS

ZPG recommends that the following principles should be considered in defining immigration policy for the United States;

(1) Goals for immigration should be set in the context of a federal commitment to planning for population changes and stabilization.

(2) Determination of future immigration goals should be guided by the 1972 President's Commission recommendation that "immigration levels not be increased" in the interest of planning for stabilization of the population at a "lower rather than a higher level".

(3) Immigrants should be admitted equitably, without preference to race, national or ethnic origin, color, religion, or sex.

(4) Immigrants and refugees, with the exception of immediate family members of U.S. citizens, should be admitted under a global goal or ceiling for immigration.

(5) All immigration laws should be fairly and firmly enforced with every reasonable precaution taken to protect civil rights and liberties. Enforcement should be a comprehensive approach that includes enforcing our present laws and labor laws, appropriate trade agreement, foreign assistance, especially family planning services, sanctions against employers who hire undocumented aliens (if such sanctions can be enforced in a non-discriminatory manner) and legalization of the present population of undocumented aliens currently residing in the U.S.

(6) Because immigration law itself is only one of many different—and currently conflicting—policies which influence immigration into the United States, future law should be coordinated in both its design and its implementation with U.S. social, economic, and foreign policy. [30]

(7) We must link our immigration goals in particular with a strong program of foreign assistance and a deeper understanding of the causes of mass migration. Without continued funds for international family planning programs to help bring population under control in the Third World, we will never see the end of mass movements of people. With 90 percent of global population growth projected to be concentrated in the Third World by the year 2000, we are facing a massive population explosion. Pressures to migrate to countries where there is more hope, more room and a chance to survive will be overwhelming. "Growing populations, dwindling resources and decaying environments are bound to cause economic disorder, civil and political upheaval in many LDCs. As the weak economies, frail social structures and unstable political conditions in these countries give way under pressure, tremors will be felt throughout the world." [31] We must address the long-term solutions to continuing large-scale migration while designing—as is our right and obligation—short term policies. One without the other is self-defeating. Just as we cannot determine immigration limits in the absence of a population policy—whatever that policy may be—we cannot design domestic policy in the absence of appropriate foreign policy. The very countries from which we get the majority of our immigrants, both legal and illegal, are experiencing not only over-population but a widening economic gap. [32] Close to half of the people in these immigrant-sending countries are under 15 years of age. These young people are going to be ripe for the job market during the next decades. "According to the International Labor Organization, the developing world will have to generate between 600 and 700 million new jobs in the next 20 years merely to absorb the rapid growth in its labor force and keep its unemployment rate from increasing. This number of new jobs is more than presently exist in the whole of the industrialized world taken together." [33] Untold numbers of these people will be seeking to find work and improve their

lives through migration to the developed world, particularly the U.S. Though we are under no obligation to set out limits based on world demand, it plays a significant part in the actual implementation of our laws. We must try to reduce that demand and deal with our own needs for limits to growth at the same time.

On behalf of ZPG, I wish to thank you again for this opportunity to testify. I will be happy to answer any questions.

WHAT IS ZERO POPULATION GROWTH?

Though z.p.g. has indeed become a widely recognized slogan, many are still confused by just what it means. It is both a specific demographic term, coined by demographer Kingsley Davis in 1967 [34] and it is the name of the private, non-profit membership organization founded in 1968 following the publication of Paul Ehrlich's book, "The Population Bomb." [35]

Both the term and the organization were created in response to the deep concern of millions of people about the environmental and other consequences of continued population growth, in the United States and around the world. For example, in 1967, 54 percent of Americans responding to a Gallup poll said they felt the rate of U.S. population growth was a serious problem and 69 percent considered the global rate a problem. [36]

Their concern persists. In 1971, 65 percent of those polled for the Commission on Population Growth and the American Future said that the federal government should try to slow U.S. population growth. [37] In 1976, 57 percent of a Roper sample said the United States "must try to limit" its population growth. [38] The following year, 73 percent of a sample disagreed with the position that nothing should be done to slow population growth. [39]

For the thousands of Americans who have supported our organization over the past decade, zero population growth is a goal for the future, for which the United States as well as every nation must plan. It is a goal for the future when the nation's population will no longer continue to grow, and each generation will be roughly the same size as the next.

We support planning for the goal of z.p.g. because of the opportunities we believe it will open for improving the environmental, economic, and social wellbeing of the nation—opportunities which will be enhanced by an end to the pressures now exerted by continued population growth and uplanned change on limited resources and time for solving problems. For example:

Congress' Office of Technology Assessment expects air quality to be little better in another 20 years, despite emission controls. More cars and congested traffic are the reason. [40] If there had been no population growth between 1946 and 1968, poisonous lead emissions from car exhausts would have doubled. But because the population was growing too—and driving—emissions increased fourfold. [41]

The U.S. population is now growing by about two million people every year. Even if we were to stabilize per capita energy consumption today, which itself has been steadily increasing, continued population growth could cause the United States to use 35 percent more energy overall in the year 2025 than in 1980. [42]

On-going population growth does not promise economic advantages in the opinion of many economists. According to a study published by the Joint Economic Committee of Congress in 1977, ". . . U.S. businessmen, individually, will be better off under low growth. While there may be fewer aggregate sales and profits over the entire economy, sales and profits per company or per store or per individual would be greater." [43]

Nor does continued growth bode well for water supplies. In 1978, the U.S. Water Resources Council reported that by the end of the century, water supplies will be severely inadequate in 17 of the nation's 106 water supply regions. Ancient deposits of groundwater are being pumped out of the High Plains aquifers—a permanent loss each year equal to the Colorado River's entire flow. [44]

The United States has a heavy responsibility to husband its natural resources for global purposes. With one out of every three acres of our farmland in production for export, the world depends increasingly on U.S. food production. But, the President's Council on Environmental Quality reported in 1977 that our prime farmland for crops is now almost entirely in production, and it is becoming smaller. Between 1967 and 1975, more than eight million acres were converted to urban development, reservoirs, and other uses, amounting to an average net loss of one million acres annually, or a little more than four square miles per day. [45]

For some people, population growth is only a global problem. Surely, the rates and numbers are greater worldwide than in our own country. The world's population increases by almost two percent annually; that adds up to 200,000 more people daily, almost 90 percent of them in the less developed nations. [46] "Over the next two decades, these countries will face unprecedented challenges," World Bank President Robert McNamara said in August 1979. "They will need to create productive employment for a work force that is likely to expand by more than 500 million people between 1975 and 2000; over the same period their cities will need to provide jobs, housing, transportation, water, sanitation and health for almost one billion additional inhabitants . . ." [47]

The impact of U.S. population growth is substantial internationally as well as domestically. The President's Commission in 1972 found that, "Right now, because of our large population size and high economic productivity, the United States puts more pressure on resources and the environment than any other nation in the world." [48] "Third World countries have been quick to point out that each new American consumes five times as much food and 60 times as much energy as the average South Asian," a task force of environmental organizations sponsored by the Rockefeller Brothers Fund noted in 1977," . . . the 1.3 million Americans added each year through natural increase constitute at least as much of a burden on the global resource base as the annual natural increase of 12 million in India." [49]

Our growing population will continue to edge out the less developed nations in resource consumption. In a study of global resources and population, Ronald Ridker of Resources for the Future States, "While the less-developed countries contain 73 percent of the world's 4.3 billion people in 1979, they will comprise 78 percent of the 6.2 billion now projected for the year 2000; they currently account for only 20 percent of the world's output of goods, and that is not expected to rise to more than 23 percent in the year 2000." [50]

The members and supporters of ZPG share the assessment of the President's Commission on U.S. population growth: "Recognizing that our population cannot grown indefinitely, and appreciating the advantages of moving now towards the stabilization of population, the Commission recommends that the nation welcome and plan for a stabilized population." [51]

WHAT IS THE U.S. POPULATION SITUATION TODAY?

The present population of the U.S. is 228,161,000 (December 1980). In the decade since the organization was founded, the U.S. population has begun to undergo significant changes. [52] The most dramatic has been in childbearing. In 1968, the average number of children each woman was expected to bear over her childbearing years was about 2.5. Since 1972, it has been below replacement level and now hovers at about 1.8. [53]

However, one thing has not changed. The U.S. population continues to grow. In 1978, it increased by about two million. The Census Bureau, which does not consider estimates of illegal immigration, reported a net increase of 1.4 million births over deaths and net legal immigration of 402,000 in 1978. This number does not include refugees. In 1980, that number has grown to 1.6 million. [54] The Bureau projects even greater growth in the population during the 1980's than during the 1970's: about three million more in the next decade than the 17.5 million growth of the last. [55]

Given the changes in childbearing which have occurred, this increased population growth might seem unexpected. There are two reasons for it:

First, we do not have even-sized generations. Today's young couples comprise an unusually large age-group—the largest group of potential parents in the nation's history. In 1976, according to the Census Bureau, there were 48.1 million women in their childbearing years—ages 15 to 44. In 1980, their number has increased almost eight percent and by 1990 the increase is projected at almost 19 percent. [56] It is primarily this large generation of potential parents—not just their individual fertility—upon which demographers base their projections of an "echo" of the post World War II Baby Boom for the end of the 1980's. [57] America's baby boom generation is coming of age. The baby boom generation promises to have a major impact on the 1980's. As we enter the decade, those born in the post-war baby boom years now aged 20-29, number 40 million and make up 18 percent of the U.S. population. Simply by virtue of its size, this group will contribute significantly to the demographic trends that will shape the next 10 years.

Second, the continuing immigration of people—legally and illegally—into the United States, also adds substantially to current and projected population growth. During the past decade, Census Bureau estimates of annual net legal immigration have ranged from 315,000 in 1977 to 460,438 in 1979, the lowest and highest figures for the decade. [58] Estimates of annual illegal immigration, which the Bureau does not prepare, range from less than 200,000 to more than one million. [59] It was for that reason that the House Select Committee on Population last year reported that 25 percent to 50 percent of annual population growth is attributable to legal and illegal immigration. [60]

WHAT IS CURRENT IMMIGRATION POLICY?

U.S. immigration law has existed since 1798. Since then, the law and public policy have evolved and changed considerably. But throughout its almost 200 years of existence, the law's purpose has been to place limits on the character and numbers of immigrants who may enter the country. Today, although the United States admits a larger total number of immigrants than any other country, our policy continues to be one of limits. [61] But those are limits only on the books. Our present immigration policy makes that impossible. In practice, our policies and system do not effectively enforce those limits.

Our current policy is ineffective in limiting immigration. Massive illegal immigration today proves this point. [62] The Ford Domestic Council Committee observed, "Our official commitment is to an exclusionary policy . . . The de facto situation is quite the opposite in that a combination of legal loopholes and incentives, enforcement inadequacies, and international push-pull forces have considerably eased limitations on immigration so that in practice we have a very open immigration system."

Even if it were effective—and this is especially important to understand—our policy ignores the impact of immigration on either present or future changes in the nation's population. Unlike the policies of Canada and Australia, which consider demographic goals in the setting of immigration goals, U.S. policy has not been developed with consideration given to demographic choices for the nation's future. [63] The Ford Committee went on to state: ". . . the statutory framework within which illegal immigration occurs and is defined was developed in order to eliminate past injustices from the law rather than to establish policy or definitions for meeting society's needs for immigration over future years." [64]

Failure to recognize or address its significance to changes in our population growth, distribution, and age structure is not unique to immigration policy. It is characteristic of all federal policy. Based on three weeks of hearings in 1978, the House Select Committee on Population concluded:

"The Federal Government has no capacity to plan systematically for population change; yet changes in the size, age composition, and geographical distribution of the population can, and often do, have profound effects on Federal policies, and Federal policies and programs often influence the direction of population change unintentionally. The United States has no explicit policy outlining goals relating to the overall size, growth, and distribution of the population; and the benefits and disadvantages of those policies and programs that do effect the U.S. population are not assessed in terms of their impact on population." [65]

WHAT KIND OF POPULATION POLICY DO WE NEED?

This country needs a population policy which will enable it to do two things:

By recognizing the impact of changes in the population on public policy, the federal government could better design and implement programs that can fulfill their objectives for improving the well-being of the country. This was the message former President Carter gave to Congress in a section of his fiscal 1980 budget request entitled, "Population Change and Long Range Effects on the Budget." "In such areas as research and development, energy, retirement policy and education," Mr. Carter said, "we need to look further into the future in order to build strong foundations for a changing society." [66]

--By recognizing the influence public programs themselves exert on the population, the federal government could make choices for the nation's demographic future which serve the goals of public policy. While the full extent of federal programs influence on population changes is not understood, we do know that government involvement in family planning services and development, the regulation of immigration, and the encouragement of regional economic development and transportation have indeed influenced the growth, age-structure, and distribution of the population. [67]

Failure to recognize population changes has seriously and often adversely affected the education, employment, and housing of the country during the past two decades. [68] Future projected changes will also deeply effect health care, retirement programs, and the economy. [69] "Many of our current economic problems stem from a past failure to appreciate the significance of demographic trends," explains economist Michael Wachter of the University of Pennsylvania. [70]

Changes in fertility and immigration, influenced by federal programs, could make a significant difference in the size of the population, which is now about 228 million. [71] If the total fertility rate, from 1980 to 2027, were to remain at about 1.8 and total net annual immigration—legal and illegal—were 400,000, the population would grow by about 44 million people. That is the equivalent of the populations of two more States of California or 7½ more States of Massachusetts. If the total fertility rate remained at 1.8 and total immigration equalled 800,000, the increase would be 70 million, the equivalent of the population of 3½ more States of California or 12 more States of Massachusetts. [72]

If the total fertility rate were to increase slightly to replacement level, population growth over the next 50 years would be even more dramatic. With 400,000 annual net immigration, the population would increase by 75 million; with 800,000 it would increase by 94 million. (This might happen since surveys of young wives indicate that they expect to have, on the average, 2.1 children.) [73]

ZPG believes changes in the nation's population must be both recognized in public policy-making and, when desirable, influenced. The federal government, through action by Congress, should establish an explicit population policy which:

Commits the federal government to planning for long-term projected population changes as part of its development and implementation of economic, social, and environmental programs, and

Sets goals for the nation's population size and supports programs which would encourage a transition, as soon as possible, through slower growth to eventual voluntary stabilization. [74]

We agree with the 1972 President's Commission that the evidence . . . indicates that it would be preferable for the population to stabilize at a lower rather than a higher level . . . We prefer, then, a course toward population stabilization which minimizes fluctuations in the number of births; minimizes further growth of population; minimizes the change required in reproduction habits and provides adequate time for such changes to be adopted; and maximizes variety and choice in lifestyles while minimizing pressures for conformity. [75]

We believe a federal commitment to planning for population stabilization would make a significant difference in major public policy decisions facing the nation in the 1980's and beyond.

Today, approximately one out of evey 9 Americans is 65 or older. Early in the next century, depending on future trends, perhaps as many as one out of five will be. These kinds of changes will have profound implications for the kinds of health care services which will need to be provided to older Americans. In a government committed to planning for population changes and stabilization, proposals for health care would have to be assessed in terms of long-term projected changes in the population and in terms of the health care needs of an older, non-growing population. Certainly our current federal encouragement of institutionalized health care would need to be re-examined in view of these national goals. [76]

Projected changes in the age structure of the population will have equally profound implications for the viability of future retirement programs, including Social Security. In the next decade alone, the number of people over 65 will increase by 20 percent. By 2020, U.S. elderly will number 50 million. Although our population is growing steadily older, Americans in this century have been encouraged to retire earlier and earlier from paid employment, reducing their productive years in the workforce. A government committed to planning for population stabilization would realize the need to encourage the active, healthful participation of individuals of all ages in our society. We would need to rethink not only federal support for retirement but also job-retraining, education, and employment in terms of the needs of a non-growing society. [77]

During the 1970's when the country's need for energy conservation became increasingly dramatic for international political as well as resource reasons, the distribution of the population has undergone a major shift which is made possible only by increased energy comsumption. For the first time in decades, we are witnessing a net shift in migration from metropolitan areas to non-metropolitan ones. Between 1970 and 1976, 2.3 million more people moved into rural counties than metropolitan ones. "The whole thing is built upon the automobile," says Calvin Beale, the Agriculture Department demographer who had documented the non-metro growth trend. Federal energy strategies and incentives for regional growth would have to be in tune with a national commitment to planning ahead for changes in our population. [78]

Western European countries are ahead of the United States in experiencing lower fertility. Unprepared for the prospects of slower growth, some of these countries have responded to them with financial incentives to encourage people to have more children. A policy of planning for population stabilization would direct the United States attention away from pro-natalist policies—historically proven to be relatively ineffective [79]—and toward the facts of the continued, substantial number of unwanted pregnancies in this country and the lack of universal availability of safe and effective family planning services. During the 1970's, U.S. population growth might have been one-sixth less had women had only births which were wanted at the time of conception. [80] Despite public support for family planning services for health reasons, an estimated three million women with low and marginal income plus two million teenagers of all income levels still do not have access to family planning services. [81]

Already, and especially in the decades ahead, international population growth, the enormous young populations of the less developed nations, and the high unemployment rates of those same countries, will escalate the pressures for international migration. [82] Increasingly, migration, instead of fertility, will be the "population" issue dominating international attention, according to Phyllis Piotrow in a report for the 1980's Project of the Council on Foreign Relations. [83] A commitment to planning for population changes and stabilization will underscore the need for the United States to respond to these trends not only in its admission of imigrants and refugees, which would be inadequate whatever their numbers in terms of global need, but also in its coordinated foreign policy, development aid, and trade policies.

HOW SHOULD POPULATION POLICY INFLUENCE IMMIGRATION POLICY?

In its introductory pamphlet, the Commission raised four fundamental questions about future immigration policy: "How many?" "From where?" "By what criteria?" "Through what process?" Obviously, many different economic, social, and political concerns must be taken into account in answering these questions. We believe the Congress should develop a set of principles which speak to those concerns, and planning for the nation's population future should be among them.

The United States can look to the Canadian government for guidance in the development of principles to define our immigration policy. When it rewrote its immigration policy four years ago, the Canadian parliament established ten principles to instruct the Immigration Minister when he sets annual target levels for immigration. The first principle is "to support the attainment of such demographic goals as may be established by the Government of Canada from time to time in respect of the size, rate of growth, structure and geographic distribution of the Canadian population." [84] If it were to continue its current immigraton (and fertility) levels, Canada would experience z.p.g. early in the next century. [85]

FOOTNOTES

1. "Population and the American Future," the report of the Commission on Population Growth and the American Future, 1972, p. 114. The Commission, authorized by act of Congress (Public Law 91-213), was appointed by President Nixon. Its 24 members including representatives of Congress, business, higher education, labor, and the public, were led by the late John D. Rockefeller III in a two year examination of population changes in the United States.

2. "Population and the American Future," p. 143.

3. "Preliminary Report of the Domestic Council Committee on Illegal Aliens," 1976, p. 202. Former Attorney General Edward H. Levi led this Cabinet level review of illegal immigration during the Ford Administration.

4. Domestic Council report, p. 216.

5. "Legal and Illegal Immigration to the United States," report prepared by the Select Committee on Population, U.S. House of Representatives, 95th Congress, December 1978, p. 1. Established by Congress in October 1977, the bi-partisan, 16 member Select Committee undertook a year's examination of population issues. Its report on immigration, to which no dissenting opinions were filed, was based on four days of hearings plus additional staff research.

6. "Legal and Illegal Immigration . . ." p. 32.

7. Staff Report, Interagency Task Force on Immigration Policy. March 1979, p. 242. Originally established to undertake a year and a half examination of immigration policy, in followup to the Domestic Council report, the cabinet level Task Force was disbanded after six months' work as a result of Congress' establishment of the Select Commission on Immigration and Refugee Policy (Public Law 95-412).

8. Staff Report, p. 3.

9. "Global Future: Time To Act," Report to the President on Global Resources, Environment, and Population, Council on Environmental Quality, United States Department of State, January, 1981, p. 11.

10. Commission on Population Growth and The American Future, Final Report, C. Westoff and R. Parke (ed.). Government Printing Office, Washington, D.C., 1972, p. 75.

11. Bouvier, Leon, "The Impact of Immigration on U.S. Population Size," Population Reference Bureau, No. 1, January 1978, p. 2.

12. Ibid, p. 2.

13. Ibid, p. 1-2.

14. Michael S. Teitelbaum, "Right Versus Right: Immigration and Refugee Policy in the United States Foreign Affairs," Fall, 1980, p. 42.

15. Teitelbaum, p. 42.

16. Ibid, p. 59.

17. Bouvier, Leon, "The Impact of Immigration . . ." p. 2.

18. U.S. Immigration Policy and the National Interest—The Final Report and Recommendations of the Select Commission on Immigration and Refugee Policy with Supplemental Views by Commissioners, Submitted to the Congress and the President of the United States, Pursuant to Public Law 95-412, March 1, 1981, p. 98.

19. Ibid, p. 98.
20. Ibid, p. 99.
21. Bouvier, "The Impact of Immigration . . .", p. 15.
22. Ibid, p. 5.
23. Richard A. Easterlin, "Birth and Fortune," New York: Basic Books, 1980.
24. Bouvier, Leon, "The Impact of Immigration . . .", p. 9.
25. Ibid, p. 7.
26. Select Commission Report, p. 99.
27. Ibid, p. 99.

28. "The Impact of Immigration on U.S. Natural Resources," Population Reference Bureau, Washington, D.C., 1980.

"Some Implications for Policy-Makers

Environmental pressures are a limiting factor on how large a population the United States can reasonably support at a high standard of living. This includes any population increase resulting from immigration.

U.S. environmental problems, already serious, will worsen as the population continues to expand. Some environmental problems will increase disproportionately—growing worse faster than the rate at which population is increasing.

While energy supplies and gross national product have grown hand in hand at 3-3½ percent a year for almost 40 years, the annual energy growth rate will shrink to less than 1 percent by the year 2000, occasioning some fundamental national problems for which we have no precedent.

Energy costs will rise continually. Population pressures can only hasten the involuntary cutbacks brought on by higher prices and decreased supplies.

Americans are the best fed for the least cost of any people in the world, but the U.S. is losing large amounts of valuable agricultural land each year to urbanization, highways and the other demands of a growing population. Water shortages, and the high energy costs of irrigation, fertilizers and pesticides will place increasing constraints on U.S. food production.

The population increase caused by immigration pushes the limits of U.S. natural resources. On the other hand, it could help fill any future labor supply shortages that are not met by domestic adjustments.

It is difficult to design immigration policy without some consensus about U.S. demographic goals to serve as a framework. Immigration policy might best be formulated as part of a national population policy which in turn reflects an understanding of the limits to U.S. natural resources."

29. Bouvier, Leon. Upcoming Study of Regional Impacts of Immigration, Population Reference Bureau, Washington, D.C.

30. In previous testimony over the past five years, ZPG has supported comprehensive enforcement of immigration law, minimum wage requirements, occupational safety and health regulations, puls labor law requirements, as well as the exploration of the practical and political feasibility of new enforcement measures such as sanctions against employers who knowingly hire illegal immigrants, if such measures can be designed to be enforced in a nondiscriminatory fashion. Because ZPG is convinced of the need for effective immigration policy to respond to both the pushes and pulls for illegal entry and residence into the United States, we believe improved enforcement must be carried out in the context of coordinated domestic, economic, foreign trade, and development programs.

31. "Creating the Coming Century," Zero Population Growth, Inc. May, 1981.

32. ZPG Reporter, October, 1980, Vol. 12, No. 6, p. 7.

33. Teitelbaum: Right versus Right, p. 27.

34. In a paper presented at the annual meeting of the National Research Council in March 1967 and subsequently in an article, "Population Policy: Will Current Programs Succeed?" in the November 10, 1967, issue of SCIENCE, demographer Kingsley Davis pointed to the absence of any discussion of long-range goals in the population-policy movement, but concluded, "Most discussions of the population crisis lead logically to zero population growth, because any growth rate, if continued, will eventually use up the earth." Globally, z.p.g. would be achieved when births equal deaths over time. At the national level, z.p.g. would be achieved when births plus immigration equal deaths plus emigration over time.

35. Zero Population Growth, Inc., was incorporated in New York City on December 9, 1968, by Connecticut attorney Richard Bowers, Stanford University biologist Paul Ehrlich, and Yale University biologist Charles Remington, as a national, non-profit membership organization. Based in California until 1974, ZPG is now headquartered in Washington, D.C. Its 10,000 dues-paying members support lobbying, publications, and population education activities which seek to build support for planning for population stabilization in the United States and around the world. ZPG and its sister foundation, ZPGF, also are supported by contributions and grants from foundations, including the Rockefeller Foundation, the Sunnen Foundation, the Packard Foundation, the ARCO Foundation, the Noble Foundation, and the Educational Foundation of America.

36. This Gallup Poll was commissioned by the Population Council and reported by John Kantner in "American Attitudes on Population Policy: Recent Trends," Studies in Family Planning, the Population Council, May 1968.

37. This finding is from a poll taken in May and June, 1971, by the Opinion Research Corporation for the Commission on Population Growth and the American Future, and was reported in the Commission's Research Reports, Volume Six, "Findings of the Commission's National Public Opinion Survey," p. 476.

38. This finding comes from a survey by the Roper Organization, reported in Roper Report 76-2, question 5.

39. This finding comes from a poll taken in June 1977 by the Roper Organization and reported in the Roper Report 77-6, page L, question 32.

40. "Changes in the Future Use and Characteristics of the Automobile Transportation System," U.S. Office of Technology Assessment, 1979.

41. Paul Ehrlich, et. al Ecoscience, W.H. Freeman and Company, 1977, p. 725.

42. In 1978, the total U.S. energy consumption was 78.151 quadrillion BTUs (British Thermal Units). Population was 218.5 million. Following the U.S. Census Bureau's Series II ("medium") projection, the U.S. would have 295.7 million people in the year 2025—a 35 percent increase. If energy consumption per person remains the same, we would be using 105.8 "quads" of energy in 2025. If consumption per person were reduced, we would still be using 35 percent more energy than if population had not grown.

43. S. Fred Singer and Bradley W. Perry, "The Economic Effects of Demographic Changes," 1977, published by the Joint Economic Committee of Congress in "U.S. Economic Growth for 1976 to 1986," Vol. 11. The Commission on Population Growth and the American Future concluded, "We have looked for, and have not found, any convincing economic argument for continued national population growth. The health of our economy does not depend on it. The vitality of business does not depend on it. The welfare of the average person certainly does not depend on it." p. 41.

44. "Second National Water Assessment," U.S. Water Resources Council, 1978. Eight of the 10 fastest-growing U.S. cities between 1970 to 1976 are in the Southwest—most in areas with inadequate surface water supply projected for the year 2000.

45. "Environmental Quality: the Eighth Annual Report of the Council on Environmental Quality," the President's Council on Environmental Quality, 1977. Also, "Environmental Quality: the Ninth Annual Report . . ." 1978. "In 1977," CEQ reports, "U.S. farms not only fed our own population but also exported 50 percent of the wheat that they produced, 68 percent of the rice, 50 percent of the soybeans (including bean meal), 28 percent of the grain sorghum, and 28 percent of the corn . . . Although the United States produces only about one-fifth of the world's wheat and feed grains, exports account for 52 percent of the wheat and feed grains traded on the world market. Yet the evidence is that the soils best able to produce these crops are being turned to other uses at disproportionate rates." Ninth Report.

46. "World Population 1977," U.S. Census Bureau, 1978.

47. Robert S. McNamara, "World Development Report, 1979" The World Bank, August, 1979, p. 1.

48. "Population and the American Future," p. 42.

49. "The Unfinished Agenda", a Task Force Report Sponsored by the Rockefeller Brothers Fund, 1977.

50. Ronald Ridker and Elizabeth W. Cecelski "Resources, Environment and Population: The Nature and Future Limits," Population Bulletin, Population Reference Bureau, 1979.

51. "Population and the American Future," p. 110.

52. "From a demographic standpoint . . . the 1970's deserve a place in history," says Bryant Robey, editor of American Demographics in the November/December 1979 issue. "Four great demographic trends took almost everyone by surprise and carried far-reaching implications for business and government. These trends in fertility, mortality, migration, and household formation are forcing changes in our very assumptions about society." These trends include the decrease in the total fertility rate below the replacement level; a reduction in the average number of people per household from 3.14 in 1970 to 2.81 in 1978; a reduction in the death rate for the total population by 5 percent in the 1970's compared to only 1 percent in the 1960's; an increase in the median age of the population to over 30; a shift in regional population growth from the Northeastern states to the South and West; also a shift in growth from metropolitan to non-metropolitan areas.

53. "Perspectives in American Fertility," Current Population Reports, Special Studies Series P 23, No. 70, Bureau of the Census, U.S. Department of Commerce, July 1978, p. 6. The total fertility rate, which is an estimate of the average number of children each woman would have if all women were to continue to bear children at the current rate, dropped to about 2.2 in the mid-1930's, peaked at about 3.7 in the late 1950's, and has been below 2.1 since 1972.

54. "U.S. Population is 229.9 Million as 1981 Starts, Census Bureau," U.S. Census Bureau news release, February 1, 1981.

55. Census Bureau.

56. "Taking Shape: A Bigger, Different Population," U.S. NEWS AND WORLD REPORT, October 15, 1979, p. 47.

57. "Projections of the Population of the United States: 1977-2050," Current Population Estimates and Projections, Series P-25, No. 704, Issued July 1977, Commerce Department.

58. "Projections of the Population . . ." Depending on the total fertility rate (assumptions ranging from 1.7 to 2.7), the Census Bureau projects that between 3.34 million and 5.06 million babies might be born in 1990. At the peak of the post World War II Baby Boom, an average of 4.27 million babies were born annually.

59. According to the U.S. Census Bureau, a net of 438,000 legal immigrants were admitted to the United States in 1970; 327,000 in 1976, 315,000 in 1977, 343,000 in 1978, and 460,438 in 1979. However, these numbers represent estimates of legal immigration, since the Immigration and Naturalization Service stopped counting emigrants in 1957. While the INS estimates emigration to amount to about 25,000 people annually, the Census Bureau uses an estimate of 36,000. However, Jennifer Peck of the Census Bureau, Robert Warren, formerly of the INS and the Bureau, and Charles Keely of the Population Council have written that emigration may be substantially higher.

60. In an article published in the Population Council's journal, Population and Development Review in December 1977, Charles Keely reviewed different estimates of illegal immigration, "Counting the Uncountable . . ."

61. "Legal and Illegal Immigration . . ." p. 2. Immigration accounts for a major portion of U.S. population growth. Of the 1970 population of the U.S.—203 million—about 105 million are

attributable to the 1790 population. About 98 million, or 48 percent, of the 1970 population is attributable to the estimated net immigration of 35.5 million in the 1790 to 1970 period. Since the year 1600, over 99 percent of the U.S. population is attributable to U.S. net immigration.

62. Robert Manning and Melanie Wirken, "U.S. Immigration Law: How It Evolved," Zero Population Growth, Inc., 1977.

63. According to the Immigration and Naturalization Service, the number of illegal immigrants apprehended annually has increased from 110,337 in fiscal 1965 to over a million since fiscal 1977.

64. On page 8, we discuss Canada's two year old Immigration Act, which requires the Immigration Minister to announce periodically a target level for immigration and to specify to the Parliament the "manner in which demographic considerations have been taken into account in determining the number." In 1978, the Australian government rewrote its immigration policy, tying it to a commitment to maintain a moderate rate of population growth and a five year demographic review.

65. Domestic Council Report, p. 33.

66. "Domestic Consequences of United States Population Change," House Select Committee on Population, December 1978, Findings #57 and 58, p. 7.

67. "The Budget of the United States Government—Fiscal Year 1980," Executive Office of the President, Office of Management and Budget, pp. 52 to 57.

68. Federal programs have affected the nation's population in different ways. Since the mid-1960's, but especially since the enactment of the "Family Planning Services and Population Research Act of 1970 (PL 95-83)," federal support for contraceptive services has influenced fertility. According to Frederick Jaffee and Phillips Cutright, reporting on research in Family Planning Perspectives in April 1977, independent of other demographic, social, economic and cultural variables, contraceptive services provided by clinics between 1970 and 1975 enabled low and marginal income women to avert an estimated 1.1 million births.

Immigration has played a major role in the nation's population growth, and federal restrictions—to the extent they have been both effective and ineffective—have shaped that immigration. Calling attention to the need for immigration policy to address future population changes, the House Select Committee in its report, "Legal and Illegal Immigration . . ." said: "We will never attain a state of zero population growth if immigration is allowed to continue at its present state despite our low fertility. Indeed, even if immigration were limited to legal movements of the present size, we would still continue to grow for at least another 100 years before leveling off at about 300 million."

Commenting on the influence of federal policy on migration within the United States, the Select Committee, in its report, "Domestic Consequences . . ." said: "Although the Federal Government has not had direct policies to influence the movement of population within the United States, it has affected migration indirectly through various programs. For example, the interstate highway system, subsidies for home ownership and new capital investment, and assistance to rural areas have all contributed to locational decisions of individuals and firms. Most of the effects of Federal programs on migration are unplanned and unintended consequences of decisions made for other reasons."

69. The increase in fertility following World War II as well as the decrease which began in the 1960's were ignored by school systems and educational planners to the financial detriment of communities. According to a 1978 report of the National Institute of Education, "Educational administrators and policy-makers generally have been caught unprepared by population trends."

In a paper prepared for a special report of the National Commission for Manpower Policy in 1976, economist Michael Wachter reported, "The evidence suggests that (the) noninflationary rate of unemployment . . . has increased dramatically over the past 15 to 20 years—largely in response to demographic developments . . . the interaction of the demographic shift toward younger and female workers and the declining cost of unemployment are the principle causes in the rise of the noninflationary rate of unemployment."

The Baby Boom generation entering adulthood plus the growing number of individuals living alone has substantially increased the number of households in the country, bringing new demand pressures for housing. According to the Census Bureau's March 1978 report on "Households and Families by Type," there were 76.0 million households in 1978. "Thus far during the 1970's, the number of households has increased by 12.6 million. In the 1960's, the increase was 10.9 million households . . . The disproportionate increase in the number of (single individual) households in recent years has contributed substantially to the decline in the average household size from 3.14 persons in 1970 to 2.81 persons in 1978."

Even now, we are not adequately preparing for the movement of the Baby Boom into its middle years. In testimony presented to the House Select Committee on Population last year, Sheila Kamerman, Co-Director of Cross-National Studies of Family Policy at Columbia University, said: "Most discussions of the baby boom cohort of the late 1940's, 1950's, and early 1960's have ignored the approaching middle years of that cohort's life cycle . . . except for some labor market projections and a few studies related to housing policy, no serious attention has been paid to the many other implications of this cohort entering the mid-life state (ages 25–54) from now on."

70. Currently, projected changes in the age structure of the nation are the single biggest population trend on which policy makers are focusing. By early in the next century (depending on changes in immigration and fertility), the median age of the nation's population is projected to increase from the late 20's to the late 30's. This change, which encompasses almost a doubling of the proportion of the nation's population 65 and over, will significantly influence health care, retirement, and economic policies.

In its 1978 Annual Report, the Board of Trustees of the Federal Old-Age and Survivors Insurance and Disability Insurance Trust Funds observed that over a 75 year period, projected demographic changes—i.e., the growing proportion of retirement age individuals—will lead to an average annual deficit of 1.4 percent of taxable payroll. In the years 2028 to 2052, the deficit would be about 4.10 percent of taxable payroll.

This projected shortfall in Social Security retirement benefits is stimulating re-examination of benefits, taxes, and age of eligibility for benefits. In her book, The Future of Social Security, Alicia Munnell of the Federal Reserve Bank of Boston states, "Even if the Social Security Administration's recent fertility rate assumption is too low, the system faces cost increases resulting from demographic changes."

In its recent 50th Anniversary assessment of the future of the economy, Business Week emphasized the importance of "the ability of government policy-makers to capitalize on projected demographic developments." Business Week quoted Richard Easterlin, University of Pennsylvania economist and former President of the Population Association of America, "since World War II, population changes have for the first time in U.S. history become an active rather than a passive element in economic fluctuations."

The growing proportion of older Americans in society underscores the need to resolve the inadequacies of our present health care system for meeting their needs. In its 1976 report on "New Perspectives in Health Care for Older Americans," the House Select Committee on Aging's Subcommittee on Health and Long-Term Care concluded, ". . . the present acute-medical orientation of the Nation's health policy, largely based upon compromises in the 1965 medicare and medicaid statute, should be changed. A preventive and medical-social model needs to be developed to avoid later costly curative care and to allow the elderly to be productive in the community."

71. Michael Wachter, quoted in "Population Changes that Help for a While," Business Week, September 3, 1979, p. 180.

72. According to the Census Bureau's September release of "Estimates of the Population of the United States for August 1, 1979," the total population (including Armed Forces overseas) was about 220,610,000. It is important to keep in mind that this estimate does not include a measure of illegal immigration. Nor does it include the estimated five million people whom the Bureau believes were not counted in the 1970 census.

73. Leon Bouvier, unpublished material, International Statistical Program Center, Census Bureau, 1979. They assume no change in mortality from that observed in 1977. The age distribution of the migrant population is assumed to be the same as that used in Census Bureau projections. For a graphic depiction of these projections as well as projections based on 200,000 annual net immigration, see the attached tables and graphs. Because the Census Bureau does not publish projections which include different projections for immigration, the federal government does not have available to it a range of population projections which more closely reflect demographic reality.

In July 1978, the population of the State of California was 22.3 million, and in the State of Massachusetts it was 5.7 million, "Population Profiles of the United States: 1978," U.S. Census Bureau, Current Population Reports, Series P-20, No. 336, April 1979, p. 36."

74. Based on the National Fertility Study of 1965 and surveys it has conducted since 1967, the Census Bureau reports that between 1965 and 1976, wives ages 18 to 24 who were white reduced the number of births they expected from between about 3.2 to 2.1 on the average. For young wives who were black, the average number of expected births dropped from 3.4 to 2.3. "Perspectives on American Fertility," Census Bureau, Current Population Reports, Special Series-23, No. 70, July 1978, p. 21.

75. One example of a national policy which would set goals for planning for population changes and eventual stabilization is H.R. 907, legislation introduced in Congress in January by Representative Richard Ottinger (D-NY). To oversee the federal government's commitment to this policy, the legislation proposes the creation of a White House Office of Population Policy. This proposal reflects the recommendations of the 1972 President's Commission for an Office of Population Growth and Distribution in the White House, the recommendations of Congress's National Advisory Committee on Growth Policy Processes in 1977 for an independent National Growth and Development Commission, and the recommendation of the House Select Committee on Population in 1978 for a separate, independent agency in the Executive Branch to handle population matters.

Mr. Ottinger has been joined by 20 co-sponsors of the bill, which has been referred to the Census and Population Subcommittee. The co-sponsors include: Daniel Akaka (D-HI), Robert Garcia (D-NY), Les AuCoin (D-OR), Paul McCloskey (R-CA), John Burton (D-CA), Matthew McHugh (D-NY), Tony Coelho (D-CA), Antonio Borja Won Pat (D-Guam), Robert Edgar (D-PA), Ted Weiss (D-NY), Tony Beilenson (D-CA), Robert Kastenmeier (D-WI), Berkley Bedell (D-IA), Barney Frank (D-MA), John Bingham (D-NY), Norman Mineta (D-CA), Vic Fazio (D-CA), Leon Panetta (D-CA), and John Conyers (D-MI).

76. "Population and the American Future," p. 111.

77. "The elderly population (65 years and over) is projected to grow to 34 million by 2010 and then to 52 million by 2030. The proportion of the elderly in the total population, which was 10.7 percent in 1976, will start to rise rapidly in 2010, as the "baby boom" generation begins to reach the age of 65. It will peak in the year 2030 at between 14 and 22 percent of the population, depending on future fertility behavior." Select Committee on Population, "Domestic Consequences . . ." p. 4. According to Gene Moyer in the Office of Planning and Evaluation, Department of Health, Education and Welfare, the Carter Administration's proposals for national health insurance are based on projections of the population through the year 1980, prepared by the Social Security Administration.

78. The custom of retirement in one's 60's began with the first social security system in the world, established in Germany in the 1880's—70 was set as the "normal" retirement age. At that time, life expectancy was 42. Today, "a retirement age that bears the same proportionate relationship to mean life expectancy (now 73 for the United States) would be 120 years of age," according to Doug Norwood in a paper on "Retirement Age" prepared for the Budget Division of the Office of Management and Budget, 1978. The trend in U.S. retirement practices, however,

has been toward earlier and earlier retirement. At the end of the last century, 68 percent of the men 65 and older worked; in 1976, only 20 percent did.

79. Calvin Beale, demographer with the Department of Agriculture, is quoted in "Nonmetropolitan growth steps on the gas," by Steve Behrens in the November 1978 issue of the ZPG REPORTER.

80. In a "Background Paper on Population," for the April 1979 Belaggio Conference, Bernard Berelson, President Emeritus of the Population Council reported with his Council colleagues Parker Mauldin and Jacob Segal that due to low fertility rates, deaths now exceed births in both Germanies, England, Wales, and in several other small countries. Commenting on the pronatalist policies of some of these countries, Princeton University demographer Charles Westoff said last year, "There is no clear evidence that the trivial baby bonuses, maternity care benefits and various employment benefits that have been legislated in European countries have had any appreciable impact on the birthrate." Family Planning Perspective, March/April 1978.

81. In testimony to the House Select Committee on Population, Jeannie Rosoff, president of the Alan Guttmacher Institute (see footnote 54), reported that married women are having an estimated 250,000 to 300,000 "unwanted pregnancies and births each year." A 1972 survey of the National Center for Health Statistics in HEW found that nine percent of births to married women were classified as "unwanted at the time of conception." According to the Center, there were similar results in the 1976 survey, but they have not yet been published. Based on an analysis of data collected in the 1973 National Survey of Family Growth, Martha Munson of NCHS found that if women aged 15 to 44 that year had had only the number of children they wanted, they would have had 14 million (nine million definitiely and five million possibly) or 21 percent fewer births over their childbearing years to date.

82. The Alan Guttmacher Institute, a special research and policy analysis affiliate of the Planned Parenthood Federation of America, surveys and reports regularly on the availability of family planning services.

83. According to the "1977 World Population Data Sheet" of the Population Reference Bureau, Latin America—the major although not only source of illegal immigration to the United States—is experiencing the highest continental rate of population growth in the world. With a continued annual natural increase of about 2.7 percent, its expected population of 336 million in mid-1977 would double by the year 2003. These rates of natural increase are nearly matched in Asia and Africa. In contrast, the United States has an annual rate of natural increase of about 0.6 percent which would double the population in 116 years and a growth rate, including legal but not illegal immigration, of 0.8 percent, doubling the population every 87 years.

Even if the population growth of all nations were to end tomorrow—an impossible demographic change short of catastrophe—there would continue to be a tremendous population push for emigration due to the age structure in less developed countries. In Latin America, 42 percent of the population is under age 15; in Mexico, 46 percent. The world average is 36 percent, in the United States it is 26 percent.

Rapid population growth and very young populations will exert tremendous pressures on the job markets of less developed countries which already are experiencing severe unemployment and underemployment problems. According to James Bass of the Inter-American Development Bank in a 1978 report, more than 40 percent of the Latin American Labor force is excluded from "fully active productive work" due to unemployment and underemployment. Globally, according to Lester Brown, President of Worldwatch Institute, less developed countries had more than 24 percent of their labor force unemployed or underemployed in 1970; it could increase to nearly 30 percent by the beginning of the 1980's. The Population Reference Bureau foresees 800 million more adults seeking jobs in the next two decades in addition to 300 million already unemployed or underemployed.

84. George Tapinos, Phyllis Piotrow, "Six Billion People: Demographic Dilemmas and World Politics," 1980's Project, Council on Foreign Relations, 1978.

85. The following ten principles form the framework for Canada's 1977 Immigration Act:

(a) to support the attainment of such demographic goals as may be established by the Government of Canada from time to time in respect of the size, rate of growth, structure and geographic distribution of the Canadian population;

(b) to enrich and strengthen the cultural and social fabric of Canada;

(c) to facilitate the reunion in Canada of Canadian citizens and permanent residents with their close relatives from abroad;

(d) to encourage and facilitate the adaptation of persons who have been granted admission as permanent residents to Canadian society;

(e) to facilitate the entry of visitors into Canada for the purpose of fostering trade and commerce, cultural and scientific activities and international understanding;

(f) no discrimination on the basis of race, national or ethnic origin, colour, religion, or sex;

(g) to fulfill Canada's international legal obligation with respect to refugees;

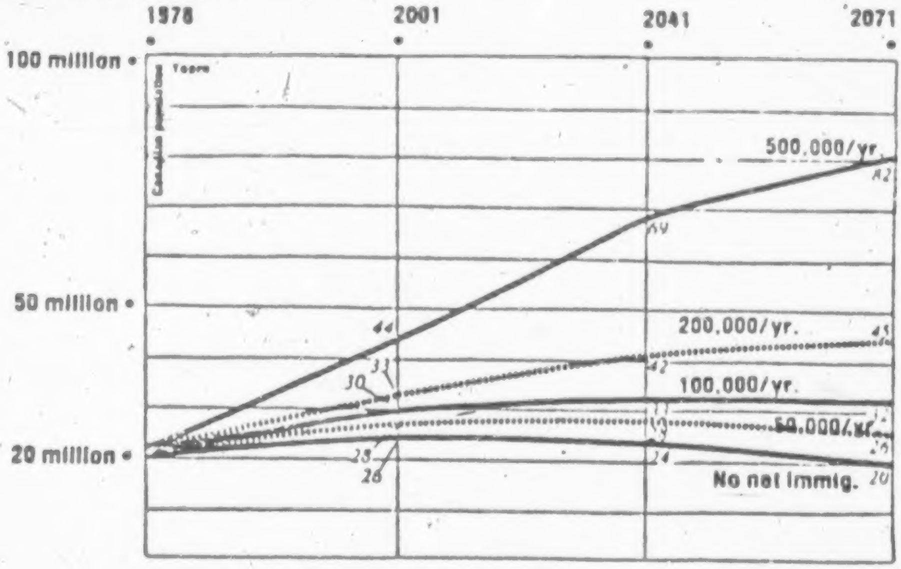
(h) to foster the development of a strong and viable economy and the prosperity of all regions in Canada;

(i) to maintain and protect the health, safety and good order of Canadian society;

(j) to promote international order and justice by denying the use of Canadian territory to persons who are likely to engage in criminal activity.

The following chart, by Statistics Canada, illustrates how the choice of different immigration levels will affect Canadian population growth.

How the choice of immigration levels will affect Canadian population growth



Source: Statistics Canada

Annual net immigration levels are shown in gray print.

Resulting national population (in millions) shown in italics.

Curves above show the effect of alternative immigration levels on the future Canadian population. All projections assume continued childbearing at a rate of 1.8 children per woman. Total immigration has hovered around 100,000 a year, but because as many as 75,000 Canadians *emigrate* out of the country each year, *net* immigration has been less than the fourth curve on the chart. That projection indicates that the Canadian population could stabilize soon after the year 2000.

86. Examples of policies which conflict with the objectives of the Immigration and Nationality Act's limitation of immigration into the United States include:

(a) development policies which provide assistance to the poorest of the poor nations but not those slightly more developed countries from which the United States largely receives legal and illegal immigration;

(b) trade policies which do not encourage the importation of foreign-made products which would stimulate the economic development of poorer nations;

(c) encouragement of industrial development along the U.S.-Mexican border which draws potential migrants to the border rather than fostering industrial development within Mexico, and

(d) labor policies which do not discourage U.S. employment of illegal immigrants, and are not adequately enforced.

Senator SIMPSON. Thank you. It will indeed be necessary before we are through, for Chairman Mazzoli and I to find out where Red Gap is. Well, the witnesses of the last 3 days have given us much assistance in our endeavor and that is important.

OK, I have some questions.

CANADIAN IMMIGRATION SYSTEM

Ms. Eisen, you state that, unlike the policies of Canada and Australia, which consider demographic goals for the setting of immigration goals, U.S. policy has not been developed with consideration given to the demographic choices for America's future.

What demographic goals do Canada and Australia consider, and how are they then worked into their immigration policies?

Ms. **Eisen**. Well, in my testimony I have listed a number of the goals that they take into account, including ultimate size of the population, which is reviewed on a periodic basis, regional impacts of incoming immigrants and refugees, and availability of jobs, availability of special services like housing, health care services, et cetera. And they make an annual review of these based on again, the number of immigrants that they would like to come into the country for that year.

Senator **Simpson**. That is a careful and continuing policy?

Ms. **Eisen**. That is right.

Senator **Simpson**. One of the significant parts of their Government operation?

Ms. **Eisen**. Well, I wouldn't know if I would say that but it is a very important part of their policy for incoming immigrants and refugees.

Senator **Simpson**. And of course those two countries have set up a system for determining the qualifications of immigrants, based on points given for characteristics considered in their national interest is that not correct?

Ms. **Eisen**. That is right.

Senator **Simpson**. Do you favor that type of thing in America?

Ms. **Eisen**. I think we would do well to look north in this case, given as I said in my testimony, the regional nature of immigration and the disproportionate impacts on different parts of the country, and our desire to continue this immigration but our need to serve people in these areas, to see that they enter into our health care system, into our job system, into our educational system. If we can't provide those needs on a regional basis, then we have to make decisions based on that.

[Additional information requested by Senator Simpson from Ms. Eisen follows:]

What the Select Commission can recommend for the U.S.

- **That the Congress state explicitly the principles—the objectives for America's future—that U.S. immigration policy will further**

- **That one major objective will be attaining desirable population goals for the nation**

ZPG believes that one of those goals should be an end to U.S. population growth early in the next century, with compatible levels of continuing immigration.

The Select Commission was charged by Congress in 1978 to include in its study the effects of immigration law on "demographic trends." (P.L. 95-412)

- **That the nation can look north to the example of Canadian policymaking**—in which a wide-ranging, but intensive series of 26 hearings sought out the views of the Canadian-in-the-street.

At each hearing, half the time was allotted to the voices of individuals who had asked to be heard.

... about Canadian immigration law

Contact [illegible], acting director general, Recruitment and Selection, Employment and Immigration Commission, 305 Rideau St., Ottawa, Ontario, Canada [illegible] (613) [illegible]

Write for: New Directions / A Look at Canada's Immigration Act and Regulations, Department of Supply and Services, 45 Sacre Coeur Blvd., Hull, Quebec, Canada.

Write for: Canada's Population: Growth and Dualism, Population Bulletin, April 1978. Send $1.50 to the Population Reference Bureau, P.O. Box 35012, Washington, D.C. 20013.

... about the Select Commission's work

Select Commission on Immigration and Refugee Policy, New Executive Office Building, 726 Jackson Pl., N.W., Washington, D.C. 20506 (202) 395-5615

... about stabilizing the U.S. population

Phyllis Eisen, Zero Population Growth, Inc.
1346 Connecticut Ave., N.W.
Washington, D.C. 20036 (202) 785-0100

October 1979

Linking immigration policy with population goals . . .

. . . is a major task for the U.S. Select Commission on Immigration and Refugee Policy.

It's a tough job, but it's been done before . . . in Canada. ◆

ZPG suggests that the Commission look north for a moment.

What Canada has done

● Specified the diverse objectives of Canadian immigration law — a major one being supporting the attainment of national population goals.

The Immigration Act of 1977 sets forth 10 objectives, the first of which is: "to support the attainment of such demographic goals as may be established by the government of Canada from time to time in respect of the size, rate of growth, structure and geographic distribution of the Canadian population."

Other objectives include family reunion, commercial travel, economic development of all regions, and enriching "the nation's social fabric" — without discrimination on the basis of race, origin, color, religion or sex.

● Enacted a law that requires the immigration Minister to announce periodically a "target" level for immigration and specify to the Parliament the "manner in which demographic considerations have been taken into account in determining that number."

Last year, in the minister's first announcement under the Immigration Act of 1977, the chosen level was 100,000 immigrants for 1979. (That is a "gross" total. Net gain from immigration is lower, because 50,000 to 75,000 people leave Canada in a year.)

In setting the immigration target level, the minister consulted with the provincial governments.

● Begun to use immigration controls as a "management tool" to fine-tune admission levels to the current economic and demographic situation in Canada.

For example, admission of immigrants can be tightened in periods of high unemployment. Extra points toward admission can be given to applicants willing to settle where greater population growth is desired (currently, in Quebec).

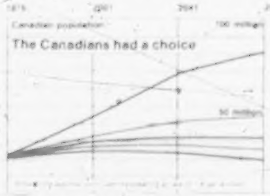
How Canada did it

● The Immigration Minister began the Canadian Immigration and Population Study in 1973. Two years later, its four-volume "green paper" started out with a discussion of alternative immigration levels and their impacts on population growth.

● In 26 public hearings in small and large cities across Canada, a bipartisan committee of Parliament listened to hundreds of individual Canadians as well as major interest groups.

● A Special Joint Committee of Parliament, created to review the green paper, urged that the Canadian government declare a national population policy as a basis for immigration law.

● The Parliament adopted its Immigration Act in August 1977, effective in April 1978. In November 1979, the Immigration Minister will, for the second time, announce the annual immigration target level for the coming year.



Curves show effect of alternative immigration levels on Canadian population. Top curve shows how population (now 23 million) would hit 82 million by the year 2071 if gross immigration equals 175,000 a year.

Instead, the government chose an immigration target of 100,000 a year, which would end population growth earlier in the century at about a 30 million-person peak. The curve (not shown) would be between the third and fourth curves on chart.

Endorsements

Governmental bodies endorse linkage of immigration and population policies

in the U.S.

"The Commission recommends that immigration levels not be increased and that immigration policy be reviewed periodically to reflect demographic conditions and considerations."

—*Report of the U.S. Commission on Population and the American Future, 1972, page 117*

"The primary significance of immigration may be its contribution to population growth. Even if the rate of legal immigration were to remain at its present level, its proportionate share of population growth would remain significant if the annual natural increase of the American population remains small."

—*Interagency Task Force on Immigration Policy, staff report, March 1979, page 242*

and in Canada

"A principle objective of the new policy should be the regulation of immigration flow to achieve desired population growth. Immigration in the future should be treated as a central variable in a national population policy."

—*Special Joint Committee on Immigration Policy of the Canadian Parliament*

[From the ZPG Reporter, September 1979]

LOOK NORTH TO CANADA

(By Jane MacKie)

WHERE IMMIGRATION LEVELS ARE SET WITH AN EYE ON POPULATION GOALS

At hearings of the U.S. Select Commission on Immigration and Refugee Policy this fall, ZPG will be pointing north to the Canadian example of immigration policymaking. We'll be distributing a little leaflet on "Linking immigration policy to population goals." Canada has done just that.

Canada's two-year-old Immigration Act puts the nation's population goals at the top of the list of objectives to consider when the immigration minister sets the annual target levels for immigration.

Other objectives are humanitarian, economic and social (see the Parliament's list in the box on page 4), but the act requires an annual justification from the immigration minister *only* on the "manner in which demographic considerations have been taken into account" in setting the immigration target for the coming year.

The Canadian experience is important for Americans to know about, ZPG believes, because the U.S. needs a new immigration policy based on a set of enunciated principles. And one of those principles should be a national goal of ending population growth.

As in the United States, immigration has played an important part in the development of the Canadian culture and economy. But Canadians also recognize that rapid or unplanned, sporadic growth can seriously disrupt their nation's economic, social and environmental stability.

Not a complete policy: Canada's Immigration Act "represents an important step toward the development of a demographic policy for Canada," says ZPG-Canada Director Chris Taylor, but it's not a complete population policy.

The Conservation Council of Ontario, an umbrella organization representing 40 environmental groups, has emphasized that "Canada does not have, at present, a national population policy which addresses important population issues for the country."

Such a comprehensive policy would also address family planning and child-bearing questions, and involve planning to match population characteristics with environmental and economic scenes. It would deal with the age structure and distribution of the population, as well as its size and growth rate.

However, Canada has been more explicit than most developed countries in expressing its population goals.

In a 1976 speech, Immigration Minister Robert Andras said those goals are: moderate growth, balanced geographic distribution and lessened impact on major metropolitan areas. Specifically, he said, Canada would aim to have 28 million to 30 million people in the year 2001, and slower growth in the big cities of Toronto, Montreal and Vancouver.

In Ottawa, authority has been more centralized than it is in Washington, D.C. Under the Canadian parliamentary system, an act like the Immigration Act leaves much of the decisionmaking to government ministers.

Immigration would be used as a "management tool" to achieve national goals—both in the short-run and the long-run.

The Parliament agreed with that approach: According to its Special Joint Committee on Immigration Policy, "A principle objective of the new policy should be the regulation of immigration flow to achieve desired population growth . . . Immigration in the future should be treated as a central variable in a national population policy."

How many people? Canada today has about 23.6 million inhabitants—slightly more than one-tenth the U.S. population. Among developed countries, it has had one of the highest growth rates—1.2 percent a year for the decade 1969–79.

Immigration accounts for a large part of that growth—33 percent, during 1966–75. In 1976, Canada had one of the highest net immigration rates in the world: 4.7 immigrants for every 1,000 Canadians, compared to the U.S. rate of 1.7 legal immigrants per 1,000 population.

Since 1976, however, Canadian immigration criteria have been tightened in response to economic recession. Between 1976 and 1978, gross annual immigration was cut from 149,000 to 86,000. This year, the level is expected to come close to its target of 100,000—including some 25,000 Indochinese refugees.

Those "gross" immigration levels, however, don't take into account the number of people who migrate *out* of Canada—estimated now at 70,000 a year.

Thus, a gross immigration level—this year's official target—of 100,000 minus 70,000 equals a *net* population gain from immigration of about 30,000 this year.

If Canada maintains immigration levels like that, z.p.g. could be achieved there early in the next century. According to a projection by Statistics Canada, if Canadian childbearing remains at 1.8 children per woman, and if net immigration equals 50,000 a year, the population will level off around 28 million after the year 2000. (See chart, above.)

The resulting rate of growth has been described by immigration officials as both "moderate" and "desirable."

History of concern. The Canadian government has been interested in demographic objectives since 1968, according to officials of the Employment and Immigration Commission. As childbearing decreased during the late '60's and early '70's, it became clear that immigration was contributing a bigger and bigger share of population growth. In addition, as the Baby Boom generation deluged the job market and unemployment soared, Canadians became less willing to accept heavy immigration.

In 1973, the minister of manpower and immigration initiated a Canadian Immigration and Population Study. Its four-volume "green paper," published in February 1975, led off with a discussion of the impact of alternative immigration levels on Canadian population growth. Reviewing the green paper, a Special Joint Committee of Parliament urged that the government declare a national population policy as a basis for immigration decisions.

The bipartisan committee held 26 public hearings around the country in 1975—hearing from the average Canadian-in-the-street, as well as organized interest groups. Half the hearing time was devoted to "open mike" sessions.

ZPG-Canada joined the debate, placing newspaper ads, meeting with the immigration minister, distributing information to the public and testifying at hearings.

In August 1977, after almost two years of consideration, Parliament passed its Immigration Act, based on recommendations of the joint committee. It went into effect in April 1978.

The new law has two basic goals: to provide specific guidelines for immigration policy, and to retain enough flexibility for "fine-tuning" for changing circumstances in Canada. As past Immigration Minister Bud Cullen said, "There is a strong commitment to link immigrant inflow to both economic conditions in Canada and to Canadian demographic needs."

The minister is required to announce annually how many immigrants Canada will aim to accept during the next year (or longer period), and to indicate the demographic considerations underlying that choice. Last November, the minister chose 100,000 as the target for the gross immigration level for 1979. This November, the minister will set the target anew, possibly for a longer period than one year.

A new party led by Prime Minister Joe Clark controls Ottawa this fall, however, and may have different ideas. We will see when the 1980 level is announced in November.

The annual "level" is neither a quota nor a ceiling. It may be undershot or overshot. Officials examine monthly data during the year, and can adjust entry criteria or delay cases to come near the target. For example, the point system can be adjusted to raise or lower the "pass mark"—the number of points needed for an applicant to get a visa to migrate to Canada.

According to the immigration minister's first annual report on immigration levels, the 100,000-person level "represents a synthesis of provincial views and federal policy and program preferences." But officials admit that the number is a somewhat arbitrary choice, based more on past levels and political guideposts than on a scientific study of the ability of Canada's economy and environment to absorb more people.

Salient political guideposts include a 100,000 minimum specified by the Special Joint Committee in 1975, and the statements of past immigration ministers—one identifying as desirable a range of 50,000 to 100,000 net immigrants, and the other, recommending an average gross of 142,000 immigrants a year.

The act requires the immigration minister to consult with the provincial governments about their immigration preferences. Quebec's recent growth rate, for instance, has been one-third the national rate, so it has requested that immigration applicants get extra points toward admission if they agree to settle there.

Immigration regulations clearly state that an applicant cannot be denied admission to Canada because or his or her race, national or ethnic origin, color, religion or sex. Criteria favor applicants who seem readily adaptable to Canadian life—who have job skills that are needed, for example. Immediate family members of Canadian citizens, and refugees, receive the highest priority.

The Immigration Act attempts to reduce the flow of illegal temporary workers by requiring people to apply for and obtain working papers before they enter Canada. Employers can be fined up to $5,000 and/or impriosned up to two years for knowingly hiring illegal workers. Legal workers are given Social Insurance numbers similar to Social Security numbers in the U.S.

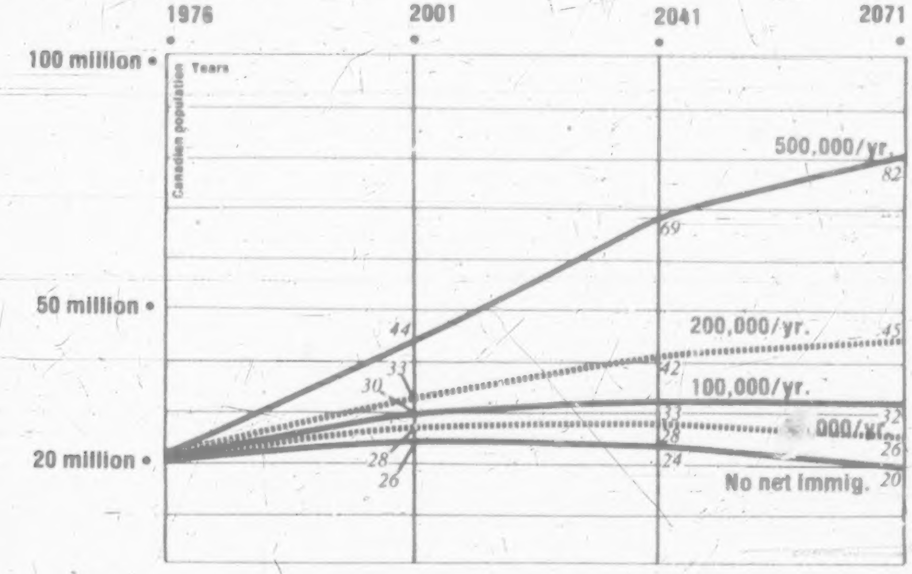
Meanwhile, in Washington: Canada devoped the "basic minimum" of a national population policy when its leaders overhauled its immigration laws, says ZPG's Chris Taylor.

Australia, Taylor says, also has looked at its growth rate in considering a new immigration policy.

Should the U.S. do the same?

Yes, ZPG will be arguing. The need is even greater, considering the heavier pressures for in-migration from the fast-growing populations in Central and South America. We will be urging the Select Commission on Immigration and Refugee Policy to recommend explicit population goals as a foundation for immigration reform.

How the choice of immigration levels will affect Canadian population growth



Source: Statistics Canada

Annual net immigration levels are shown in gray print.
Resulting national population (in millions) shown in italics.

Curves above show the effect of alternative immigration levels on the future Canadian population. All projections assume continued childbearing at a rate of 1.8 children per woman. Total immigration has hovered around 100,000 a year, but because as many as 75,000 Canadians *emigrate* out of the country each year, *net* immigration has been less than the fourth curve on the chart. That projection indicates that the Canadian population could stabilize soon after the year 2000.

Senator SIMPSON. I have a question for Roger Conner, please. In a recent article in the Wall Street Journal, which I know you were interested in, Prof. Julian Simon asserted, based upon a study which he had conducted, and I believe the study dealt with legal immigrants during a certain period, that immigrants are an economic benefit to the United States. I believe you had comment on that article.

Could you give the subcommittees a brief summary of Professor Simon's article and your assessment of its validity.

So can you tell me your thoughts about that?

Mr. CONNER. Simon's analysis is fundamentally flawed in three respects. No. 1, he looks at immigrants that had been here for at least 10 years by 1975, which means they were admitted prior to 1965. He assumes that today's immigrants will succeed as well as those who came earlier. He looks at the success of the lawyers and doctors that came over from Cuba and predicts from that that the Hmong tribesmen who are now living in Denver, and whose counting system is "one, two, many," are going to have the same success. And that doesn't make sense.

The immigrants who entered from 1965 to 1975, came during a period of rapid American economic growth; the ones coming in today have a much more uncertain economic future.

Furthermore, the immigrants who came in during these earlier periods didn't have as much competition because the level of immigration was lower. So first he compares apples and oranges.

Second, he says we take in more money from these people than we pay out. Do you know how he figures that out? He takes the cash transfer payments, the welfare that is paid to these people and says look at this. They paid in more taxes that I can count—than the welfare that they took out.

Now if he checked up on Alan Simpson to find out if this guy is a net benefit, and he took the welfare he got and compared it to the taxes he had paid in, he'd be a heck of a benefit to this country. Your answer to him would be that is not a complete analysis. You have to try to figure out a complicated question, like the marginal cost of adding a million people to American society in terms of social services. It is a far more complicated question than looking at cash transfer payments.

So Simon made a halfway attempt to answer the question.

The most important flaw in his analysis is that he concludes that these people are a benefit because of their age structure. It is because they are young. In a separate article written by Professor Simon, he concluded that if we only had a more rapidly growing population, we would have a lot more young people, and that would be better than a population in which there are even numbers of older, middle-aged, and younger people.

The problem with his analysis is that if your population curve looks like that, how big is the whole area under that curve going to be in 40 years to maintain that sort of structure?

I would like to present the committee with a more detailed written analysis because I think Professor Simon's arguments are serious and misleading.

Senator SIMPSON. Well, I think that we would like to have that. Another figure that we deal with and we think is correct is that Government assistance to an unemployed person in the United States is about $7,000 per year. I don't think anyone has controverted that figure. There are now nearly 8 million unemployed in this country. We are looking at a tremendous burden on the taxpayer. Some portion of this unemployment, and the burden it represents, is the result of displacement of Americans by immigrants from abroad. We will be developing that issue in future hearings.

I believe that is about my time, Chairman Mazzoli.

Representative **Mazzoli**. Thank you very much, Mr. Chairman.

Mr. Conner, on page 3 of your statement you talked about amnesty, and suggested Senator Kennedy yesterday in his discussion had an interesting idea. I think the Senator just simply mentioned the earlier laws, the earlier amnesties, without necessarily approving of the 12-year period or the 17-year period.

I am curious. What period do you think would be a realistic time if January 1, 1980 is not the proper time in your judgment?

Mr. **Conner**. First of all, Mr. Chairman, let me make it clear that we don't support or believe that amnesty at this time is a good idea. Frankly if somebody comes forward with an amnesty program that will work, we may look at it and support it. But the time period that has been suggested that makes sense to us is the point at which the Social Security Administration became serious about the issuance of new social security numbers in the early seventies. At that point anybody who came into this country and worked knew that they were consciously, knowingly violating American law. And that seems to us to be a good starting point for discussion.

Representative **Mazzoli**. So your idea would be that a person, just taking the year 1975, would have to have entered the United States before 1975, and would have to have been continuously in the United States since 1975. Is that it?

Mr. **Conner**. That is the gist of what we are saying.

Representative **Mazzoli**. And the number of years he or she would have to be in since 1975 would be what? How many years?

Mr. **Conner**. Let us think about what we are trying to accomplish. We are considering the person who is here and has become a firm part of American society. Now if they lived here for 3 years and then went home for 2 years, they have not become a firm part of American society and there is no reason to give them amnesty. So I would say continuous residence to the present.

LIMITS ON IMMIGRATION

Representative **Mazzoli**. Thank you. Let me ask each of you in sequence. Of course I know the answer from Mr. Conner. He has already talked about a limit. But Mr. Sternberg, do you believe in an overall national limit on immigration which includes all forms of family relatives and includes refugees?

Mr. **Sternberg**. I believe in a limit but Congress has to set the limit whenever the issue arises. I don't think there is an absolute figure, but I believe in a limit, yes.

Representative **Mazzoli**. If the Congress were to just pull a figure and say 500,000 a year——

Mr. **Sternberg**. I would say that is too small.

Representative **Mazzoli**. And if they pulled a figure of 750,000?

Mr. **Sternberg**. I would still consider it too small if you throw in all groups. However, the Congress shouldn't pull a figure; it should establish a figure.

Representative **Mazzoli**. Thank you. Ms. Alesi, do you believe that there should be a limit on immigration?

Ms. **Alesi**. Yes. I believe that there should be a reasonable limit that would be flexible to meet emergencies. I believe that it should be established by Congress. And I believe it should reflect economic and demographic factors.

Representative **Mazzoli**. And when you say established by Congress, you mean the President should not come into it whatsoever, or it should be by us after recommendation from the President?

Ms. **Alesi**. I think that if Congress fails to act, the President will act.

Representative **Mazzoli**. And Ms. Eisen?

Ms. **Eisen**. Yes. ZPG supports an overall ceiling that includes immigrants and refugees but excludes the immediate family relatives, spouses, and minor children of U.S. citizens.

Representative **Mazzoli**. It would not include the adult, unmarried children or grandfathers and those other groups?

Ms. **Eisen**. Correct. Minor children and spouses of U.S. citizens.

May I just say one other thing? It would be a great deal easier for us to choose a limit, not out of a hat, again if we had some overall goals about growth in this country, if we knew where we wanted to go. If 300 million is where we want to end, 400 million, whatever, if we had some idea about the paths, what demographic paths we want to take, what each means in terms of the political options, economic options, social options. If we had some idea of that, we would have a much better idea.

Representative **Mazzoli**. Thank you. Let me first finish up the question on limits and then I want to come back to you.

Mr. Conner, of course FAIR is very much on record in favor of limits, and would you again say for the record what those are?

Mr. **Conner**. We are in favor of a ceiling on total immigration with the existing quota set at 290,000 in 1965 as a good starting point for discussion and the burden of proof is on whoever wants to raise it or lower it. We think it should be an all-inclusive ceiling, and though spouses and minor children of American citizens are admitted immediately, their number is subtracted from the ceiling, not added.

The chairman said we want a simple, understandable policy. The people in Louisville, the people in Cody, their question is how many immigrants are going to be admitted to this country every year under the law? You can't answer that question about the current law. It takes you a paragraph or possibly a page. And you can't answer that with the Commission report either. It is not simple and understandable.

Representative **Mazzoli**. Thank you. It is very complicated to say the least. You think that there should be no exclusions, including even immediate family? They should count within this limit of 290,000?

Mr. **Conner**. They should be immediately admitted but they should be subtracted from the ceiling, not added to it.

Representative **Mazzoli**. For that year and then the next year? They are taken in immediately but they are always deducted from the total of that year, because I assume you mean 290,000 per year?

Mr. **Conner**. Correct.

IMPACT OF IMMIGRATION

Representative MAZZOLI. Ms. Eisen, you said an interesting thing: that the Commission study was flawed because among other areas which it didn't study carefully, it didn't study resource impact. You also said that the meeting you attended you felt came to a far different conclusion than the Commission has stated.

On the basis of your studies and ZPG's, regarding resource impact, how many people should the United States have in the year 2000 and how many should it have in the year 2050?

Ms. EISEN. I can't answer that.

Representative MAZZOLI. Has anyone done any resource studies, then, who could help us on that point?

Ms. EISEN. There are a number of resource studies that have been done. I included a notation of a summary of that consultation done by the Population Reference Bureau. The total is in my testimony, or I can provide more additional information to the committee.

Representative MAZZOLI. Well, we have 220 million roughly in America today——

Ms. EISEN. More than that.

Representative MAZZOLI. If you fly from Louisville to Cody and you look down on a clear day, there is hardly anything you can see except for open land. Yet, of course we can't fill that land with people. So I think there has to be a limit.

Ms. EISEN. Absolutely, there has to be a limit.

Senator SIMPSON. Thank you. Senator Grassley of Iowa.

FUTURE LABOR SHORTAGES

Senator GRASSLEY. I have a question I would like to ask Mr. Conner and Ms. Eisen. Would you respond to the contention that in the future the United States will face severe labor shortages and expanded migration is necessary?

Mr. CONNER. Mr. Grassley, if we face a labor shortage in the future then we can bring in immigrants in the future. It is often argued that we should bring in immigrants today because we are going to face a labor shortage in the year 2000.

Predictions like this are predictions which underestimate the powers of the American economy and the American businessman to adjust to new circumstances and conditions. It is a projection and it ought not to be the basis of policy unless it comes to pass.

Senator GRASSLEY. Ms. Eisen?

Ms. EISEN. I think our desire to bring in immigrants in this country, which has certainly been emphasized by the American people, and they want continued immigration; it has been good for the country; it has created the kind of diversity and strength that we all understand. That has been a clear message of the American people. They have also clearly indicated that they wanted limits to that immigration as well, and that in order to avoid a backlash, some of which we saw after the arrival of the Cubans last summer, those limits are going to have to be established.

However, to bring in additional immigrants to beef up a labor force before, as Mr. Conner said, we know what that loss is going to be, before we put our minority unemployed to work, before we put our women, who are trying to reenter the job market, into the job market, before we take our older Americans, many of whom are able to continue working and often many are forced to retire early. I think we need to take a look at all of those things before we add more immigrants for the job market. Let's have immigration for other reasons, and there are many other good reasons for immigration.

Senator GRASSLEY. Mr. Chairman, that is the only question that I had for this panel, but I have questions for the other panel that I would like to submit in writing and have them part of the record and answered in writing.

Senator SIMPSON. Without objection it is so ordered.

Senator GRASSLEY. I yield back the remainder of my time.

Senator SIMPSON. Thank you. Congressman Sam Hall of Texas.

ADVISABILITY OF PUTTING A STOP TO IMMIGRATION

Representative HALL. Thank you, Mr. Chairman.

I would address this to any of those who have testified. Has the thought ever occurred to anyone, and maybe I am taking the devil's advocate position here, but has anyone ever taken the position that we have enough people in this country at this time? Like the Hmong tribesmen, I don't think they will ever fit in this Nation. I don't care how long you teach them or train them. I don't think they should have been here to start with.

But has anyone ever taken the time to determine whether or not we should stop for a period of time the immigration coming into this country? Do we have enough people here that have not become emeshed into our society as we know it at this time? Do we have many thousands of people who will never mesh into the American society?

Someone made the comment a moment ago that we are going to have to determine first the causes of mass migration. I don't think there is any question about the causes of it. I think that was in one of you ladies' statements. If you go to Laos or Vietnam or look at the Cambodian refugees and talk with them, and go down into the Mexican area, as Chairman Mazzoli and members of our committee did last week and talk with the people there, there is no doubt about why they are coming. They are coming here in many respects for economic reasons, in many areas because of persecution, and some want to get out of the penitentiary. We have some of those from Cuba.

Where is the end to the mass migration into this country, if there is an end to it? How long are we going to continue to take people of every nationality and race into the United States? Does anyone have a suggestion?

Mr. CONNER. Mr. Hall, Newsweek took a poll last year and asked the American people whether they would support stopping all immigration until unemployment fell below 5 percent, and 65 percent of the people said yes. So the thought is one that is shared by many.

Nations go through phases in their history, one phase where they need additional people to build, for example, an industrial economy. They enter a second phase here essentially they have the people they need to build that country and don't need further immigration. I think that is where we are now.

Many nations in the world enter a third phase of overpopulation in relationship to their resource base, and they need outmigration. The United States had better be cautious never to enter phase three, because there will be no nation prepared to accept our huddled masses yearning to breathe free. Their emigration will not be a solution for the United States. So we should be cautious about creating a problem for ourselves through excessive immigration.

Representative HALL. Yes?

Ms. EISEN. Yes, I would like to respond to that as well. I think until the time comes when it becomes catastrophic for this country to bring in additional immigrants, we will always have immigration in this country. As long as there are people who want to reunite with their families, we are going to have immigration.

As far as mass migration is concerned, I think that is a different issue, and I think that while we cannot solve the world's problems of poverty, turmoil and desparation for a better way of life through mass migration—we just could never take in that many people—we will continue to see that in this country, and particularly over the next several decades, as the large number of young people in the developing world move into the job market.

So along with the short-term goals of an immigration policy that this Congress is going to address, and it has the right and obligation to address, we have to look to appropriate assistance, both continuing family planning programs abroad and appropriate development programs.

POPULATION CONTROL

Representative HALL. Let me interrupt you at that point. You talk about trying to determine the family planning abroad. I think that is an absolute waste of time and money. I think I recall 2 years ago when we had our Foreign Relations Committee determining the amount of money that was going to be given to India to try to contain the population explosion. I think it was $25 million as it left the House and as it came back from the Senate on a conference it was $45 million, 2 years ago.

I think the record will reflect that I asked Mr. Zablocki at that time after we have given that money to that country and he stated what it was supposed to be used for, what has happened to the population? He said it had increased.

We are wasting money if we think we can tell the people in India how to—I'm trying to think of the right word. [Laughter.]

I think that there is some point in time where we are going to have to mind our own business, and I think that is one of them. I don't think we are ever going to tell these other countries what they can or cannot do.

Ms. EISEN. I am afraid, though, if we mind our own business vis-a-vis family planning services in other countries that we are going to end up with a lot of their people. We need to help them if we can to control their own populations because until that happens, we will continue to get their excess populations.

Representative **HALL**. Well, do you have any strong proof that the money we have given to those countries to try to control that situation has worked?

Ms. **EISEN**. There have been many parts of the world where family planning programs are working beautifully, and Mexico is one of them.

Representative **HALL**. Mexico?

Ms. **EISEN**. Mexico is one of them. They have decreased their birth rate significantly over the last couple of years. We have contributed to some of their family planning programs through independent agencies such as Planned Parenthood and they have reduced their birth rate, and they will continue to do so. And of course all the people who are already born——

Representative **HALL**. Would you furnish that information about Mexico to this committee?

Ms. **EISEN**. I will be delighted to.

[Additional information requested by Congressman Hall from Ms. Eisen follows:]

THE WORLDWIDE NEED FOR FAMILY PLANNING PROGRAMS

A fact sheet prepared by The Alan Guttmacher Institute
January 1981

• *Why are family planning programs needed around the world?*

In developing nations, the need for family planning services is vital; the ability of people to have smaller families is a matter of both personal and national economic survival. Today, almost 800 million people live in abject poverty. One-quarter to one-half of their births are unwanted. And as many as one-tenth to one-half of all infants die in the first year of life.

The rapid growth of population, almost entirely in the less developed nations, only magnifies these problems and undermines efforts to alleviate them. Today's world population numbers about 4.4 billion. It grows by 75 million each year with five children born for every two who die. By the year 2000, if trends do not change, the world's population will reach 6.3 billion, and it will be increasing by 100 million every year. Ninety percent of this growth will occur in developing countries. Between 1975 and 2000, countries such as Bangladesh, Pakistan, Nigeria, Kenya, Mexico and Brazil are expected to double their population size. Egypt's population will increase by a projected 77 percent; India's by 65 percent; China's by 45 percent.

In the industrialized countries, population growth is less pressing. In some European countries, populations are no longer growing but the need for family planning services is no less important. It is regarded as a fundamental matter of civil rights, reproductive health and family well-being.

• *How have governments responded to the need for family planning services?*

In 1952, India became the first country in the world to establish a policy aimed at reducing its population growth by supporting family planning and encouraging people to have smaller families. Today, most people in the world -- in the developing as well as in the industrialized nations -- live under governments whose policies support family planning. For example, the governments of 91 percent of the people in less developed countries favor family planning, either to reduce fertility or to improve health. The lack of government support is greatest, however, in Latin America and Africa, where fertility rates are still the highest in the world.

About half of the funding for family planning in less developed countries comes from industrialized countries -- either in bi-lateral aid or through international organizations. The United States has been a leader, although the value and the proportion of its share has been declining. Of the estimated $450 million industrial countries commit for all kinds of population programs overseas -- family planning, research and demographic analysis -- the United States has given about $185 million in each of the last two years under Sec. 104 of the Foreign Assistance Act. Inflation, however, has eroded the value of this contribution significantly. Today, U.S. population assistance buys less than the $123 million appropriated in fiscal 1972.

In addition to funding programs in poorer nations, the industrialized countries have strongly supported family planning for their own people. In the United States, the federal government pays for family planning services under several programs, the largest of which is Title X of the Public Health Service Act. In recent years, more than $300 million in federal funds were spent for family planning programs; another $60-$70 million went for population research, including contraceptive development. In effect, the federal government spends more than twice as much for family planning services in the United States, where about 13 million people are in need of subsidized services, as it does for programs throughout the Third World where hundreds of millions are in need of services.

- *How have Americans responded to the need for family planning services?*

In response to a 1976 Roper poll, six out of 10 Americans said they believe efforts must be made to try to limit world population growth. The National Fertility Study of 1978, conducted by the U.S. National Center for Health Statistics, found that 88 percent of women interviewed think "world population growth is a serious problem." In a 1979 poll commissioned by the President's Commission on World Hunger, Americans said they would allocate only 30 percent of international assistance to military aid, but 70 percent to development aid, which includes family planning support.

At home, Americans fully support family planning. More than 90 percent of married women age 34 and younger who are at risk of an unwanted pregnancy use a method of contraception, according to the government's 1976 National Survey of Family Growth. In a 1981 ABC-Harris poll, 61 percent of the respondents said federal support for health services in general should receive a high priority.

- *How effective have family planning programs been?*

Demographers have recorded significant declines in fertility in several less developed countries between the 1960s and 1970s: Thailand, 47 percent; Indonesia, 30 percent; Singapore, 60 percent; South Korea, 45 percent; Taiwan, 28 percent; Columbia, 35 percent; Costa Rica, 50 percent; the Phillipines, 24 percent. From one country to the next, different combinations of economic development and social change, age of marriage, breast feeding, abortion and other traditional methods of birth control have contributed to the decline in fertility. But in all of them, family planning programs have played an important role.

Because of its responsibility for the sound use of government funds, Congress has studied carefully the effectiveness of family planning programs. In its review of the fertility declines in developing countries, the House Appropriations Committee last year concluded, "While not all population programs have been successful, the Committee observes a definite relationship between lower rates of population growth and a concentration of resources and grant commitment over a reasonable period of time."

In the United States, the decline in average family size from more than three children in the late 1950s to less than two today is almost entirely due to the reduction in unwanted births made possible by the widespread use of contraception and abortion. During a recent five year period, family planning services supported by Title X, which cannot pay for abortions, helped individuals to prevent one million unwanted pregnancies. For every $1.00 the federal government invested in family planning services, it saved $1.80 in social services that otherwise would have been needed the next year. "Title X," says Representative Carl Purseil (R-Mich.) of the House Appropriations Committee, "is a program that promotes personal well-being, fosters good family life, and meets the government's need for fiscal prudence."

- *After more than a decade of support, what need for U.S. funding for family planning programs around the world still remains?*

One measure of need is the incidence of unwanted births and the growing number of women in their childbearing years. In less developed countries, an estimated one-quarter to one-third of all births are unwanted. According to the World Fertility Survey, in several countries as many as half of all married women do not want any more children, but only half of them are using contraception. And an estimated one-quarter of all pregnancies end in abortion, half of them illegal.

At the same time, massive population growth in the Third World is increasing the number of people in need of family planning services faster than they are being made available. For example, one survey of 105 countries found that between 1971 and 1976, the number of women practicing contraception increased from 105 million to 136 million. But, the number of women at risk of unwanted pregmancy increased even more -- from 249 million to 263 million. The United Nations projects that between 1975 and 2000, the number of women of childbearing age -- 15 to 44 -- will increase sharply by 63.8 percent, from 863.4 million to 1.412 billion.

Despite the widespread use of contraception in industrialized countries, millions of women do not have access to safe and effective services. In the United States, of the estimated 31 million women of reproductive age in need of family planning services, 13.2 million need publicly funded services; however, about 45 percent do not have access to them. And between 1976 and 1990, the number of women old enough to have children will increase by about 17 percent.

Another measure of need for family planning services is requests for funding. In 1979, the International Conference of Parliamentarians on Population and Development urged the industrialized countries to increase their annual support for population programs in less developed countries from $450 million to $1 billion annually. Although the United Nations Fund for Population Activities has about $146 million for projects that already have been approved for 1980 and 1981, it expects requests for at least an additional $780 million during the next three years. The U.S. Agency for International Development reports requests for about two and a half times the $190 million it will have to spend for population assistance in fiscal 1981.

The need for publicly funded services is also not fully satisfied in the United States. Two million sexually active teenagers and 3.5 million low and marginal income women do not have access to services. Approximately 1.3 million abortions are performed annually. The congressionally mandated Select Panel on Child Health concluded recently that in order to provides family planning services for all who still do not have access to them, the U.S. government should increase its annual funding to $500 million.

- *What support for family planning programs around the world should the United States give in the future?*

The need for family planning services has not currently been met and the population is continually growing around the world. The U.S. government should commit itself to spend annually:

- $500 million for family planning and population-related programs in less developed countries, in order to lead the way toward achievement of the funding goals of the 1979 International Parliamentarians Conference on Population and Environment;
- $500 million for family planning services in the United States, as recommended by the congressionally mandated Select Panel on Child Health; and
- at least $138 million for contraceptive and population-related research, which Congress authorized for the beginning of the 1980s.

PREPARED STATEMENT OF ROBERT TAFT, JR. BEFORE THE SENATE APPROPRIATIONS SUBCOMMITTEE ON FOREIGN OPERATIONS

Mr. Chairman, Committee members. Thank you for the opportunity to appear today on behalf of the Population Crisis Committee.

PCC is a private non-profit organization which has, since its establishment in 1965, been a leader among population organizations in efforts to strengthen political and financial support for family planning programs overseas. Our work involves high-level advocacy at home and abroad to increase government commitment to population planning and also selective support of innovative private family planning programs in developing countries. It is perhaps important to state that we receive no U.S. government money for any part of our U.S. operations or overseas grant programs. Thus, while we may express strong opinions about the direction of U.S. population assistance, these comments are not motivated by any fiduciary interest in the program.

My testimony today is divided into three parts. The first deals with the legislative history of U.S. population assistance, including my own efforts and those of a number of other Senators and House members and public officials who were responsible for early Congressional initiatives. The second describes recent changes in developing country attitudes toward population and family planning and their implications for funding requirements as well as a few points on the nature of current population programs and their results to date. The third stresses the immediacy of population pressures, particularly rapid urbanization, and the impact which these pressures have on important U.S. security interests.

I. Congressional Initiatives on Population and Family Planning Issues

I would hope that the decisions facing this committee regarding a Fiscal Year 1982 appropriation for AID population programs might be considered within the larger context of nearly two decades of Congressional intitiatives on population--

initiatives designed at least initially to force the attention of a reluctant public and Executive branch on issues once considered too controversial for any government involvement at all.

Today, of course, public support for international population and family planning programs is quite strong, and the new Administration, I am pleased to note, gives these programs high priority, as indicated by a 33 percent increase in the AID budget request over current funding levels. It is nonetheless important to recall that to a very large degree it was Congress which changed public opinion and shaped present policy.

I was active in those early efforts, during two terms in the House of Representatives and, after 1970, in the Senate. Beginning in the early 1960s, it was the Congress--both individual legislators and a wide range of Congressional committees--that laid down the agenda for a public discussion of population issues, redefined the problems and their possible solutions in politically acceptable terms, and enacted new proposals into binding legislation, often against the opposition of short-sighted executive agency officials.

From small initial authorizations in 1963 for population research programs under AID and NIH, Congressional leadership has continually expanded population programs to where they now encompass a $166 million program of subsidized family planning services for low-income Americans, a $79.4 million NIH population and contraceptive research program, and the $190 million international population assistance program of AID which falls under your jurisdiction.

Let me illustrate the importance of Congressional leadership with a few historical highlights. In 1963 Senator J. William Fulbright, Chairman of the Senate Foreign Relations Committee, introduced language into the foreign aid bill authorizing the use of funds "to conduct research into the problems of population growth." The amendment was opposed by the Department of State. That same year Senators Joseph S. Clark and Ernest S. Gruening introduced--again over bureaucratic and political objections--a formal resolution to increase population-related research in NIH.

Two years later, in 1965, Senator Gruening, Chairman of the Government Operations Subcommittee on Foreign Aid Expenditures, opened hearings on his bill to establish an Office of Population in the Department of State and in the

Department of Health, Education and Welfare. The hearings opened with a statement by former President Dwight D. Eisenhower, reversing his earlier opposition to government involvement in population. He said: "If we now ignore the plight of those unborn generations which, because of our unreadiness to take corrective action in controlling population growth, will be denied any expectations beyond abject poverty and suffering, then history will rightly condemn us." Gruening himself was less interested in particular legislative action than in a broad-based public dialogue and kept the hearings going for three years, calling on some 120 high-level witnesses to explore population issues from every angle. By late 1967, as the hearing drew to a close, extensive national publicity had turned birth control into a legitimate public policy issue.

In 1966, reacting to growing public concern over world food shortages, House members Paul Todd, Harold Cooley, Spark Matsunaga worked with colleagues in the Senate to successfully amend Food for Peace and foreign aid legislation to allow AID to "promote voluntary activities in other countries dealing with the problems of population growth and family planning." In signing the legislation, President Lyndon B. Johnson noted that: "The sound population programs, encouraged in this measure . . . are vital to meeting the food crisis, and to the broader efforts of the developing nations to attain higher standards of living for their people." In another context Johnson noted that "less than $5 invested in population control is worth $100 invested in economic growth."

Unfortunately Johnson's verbal commitment to population programs was not matched by AID's performance in implementing them. In 1967, disturbed by foot dragging on the part of AID officials, House Foreign Affairs Committee Chairman Thomas Morgan, with active encouragement from myself, Paul Findley and Wayne Hays, among others, succeeded in adding a new provision to the Foreign Assistance Act, specifically earmarking an additional $35 million a year to support voluntary family planning programs overseas. A companion measure in the Senate was introduced by William Fulbright with a bipartisan group of 18 co-sponsors. This earmarking forced the hand of AID officials, and actual expenditures for population for FY1968 increased seven-fold over previous levels. For a number of years thereafter, Congress kept the pressure on AID officials by increasing the amount earmarked for population: $50 million in FY1969; $75 million in FY1970;

$100 million in FY1971; and $122 million in FY1972, when population programs became a regular line item in the AID budget.

In 1969, as Chairman of the House Republican Study Committee and with support from Minority Leader Gerald Ford, I appointed a Republican "Task Force on Earth Resources and Population." The Task Force Chairman, George Bush and other Task Force members such as Tim Lee Carter of ~~Tennessee~~ Kentucky later sponsored the major pieces of legislation establishing a comprehensive domestic family planning program. Calling the projections of global population growth "frightening," the Task Force issued this unqualified endorsement of family planning in its final report:

> "Family planning services, within the context of maternal and child health care services, must be made more accessible to the poor and providing these services is a proper function of all governments at sensible levels of cost. As part of family planning services, birth control information as well as devices and techniques to regulate fertility should be available to all those who want them and cannot afford them through private sources."

The same year Congress established a Presidential Commission on Population Growth and the American Future to study the impact of demographic trends. Six members of Congress served at various times on the 24-member Commission, among them several of the Commission's most conspicious activists. In his opening remarks to the Commission and in a major Presidential address to Congress on population early in 1969, President Richard Nixon made it clear that he and his new Administration fully shared Congressional concerns over rapid population growth. "One of the most serious challenges to human destiny in the last third of this century will be the growth of the population. Whether man's response to that challenge will be a cause for pride or despair in the year 2000 will depend very much on what we do today," Nixon said.

Congressional interest remained high throughout the Nixon and Ford Administrations. In 1974, for example, Congress took an active interest in the Bucharest World Population Conference, officially endorsing and funding a World Population Year Commission and sending Senator Charles Percy and Representatives Edith Green and Charles Sandman as part of a U.S. delegation headed up by Casper Weinberger. With stronger Executive Branch support for population the need for major need Congressional initiatives declined temporarily.

Under the Nixon Administration, AID's Office of Population grew in personnel and organizational clout. In 1972 program authority and technical competence were consolidated in a central Office of Population within a new Bureau of Population and Humanitarian Affairs. During the Nixon and Ford Administrations the population program established five operational principles that distinguished it from most other AID programs and accounted greatly for its dynamism.

1. The first principle was strong reliance on private voluntary agencies. The PVO intermediaries working on population were then and continue to be funded directly out of the central Population Office, and their activities have been fully integrated into AID programs. (They receive about one-third of total population account obligations.) The use of private voluntary agencies, such as the International

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4. A fourth factor was central authority over country and regional programs. Between 1972 and 1976, the Central Population Office did much of the planning and implementation for country (mission) and regional population programs. There were disadvantages to this arrangement in that some AID geographic bureaus never developed a strong commitment to population efforts and population programs were not always well integrated with other programs or sensitive to local conditions. There was, however, tremendous drive behind the population effort, resulting in a wave of new initiatives and good support for a large number of population officers in AID missions overseas.

5. The final factor was the inclusion of U.N. programs under the bilateral account. Since its inception in 1967, U.S. voluntary contributions to the U.N. Fund for Population Activities (UNFPA) have been included under the bilateral account. Although proposals are made periodically to move UNFPA into the International Organizations Account, the present arrangement has encouraged close cooperation between bilateral and multilateral population programs, increasing the effectiveness of both.

In sum, I think it is possible to argue that the tangible results of the population program were made possible because a strong central unit of professionally competent people were given the authority almost a decade ago to provide direct technical leadership and commodity support to AID Missions, PVOs and multilateral agencies. The Population Office's head-long drive to implement a global program ruffled some feathers both within and outside the Agency, but the result was a uniquely cost-effective use of taxpayers' money.

Nevertheless, it is clear that within a bureaucracy every action generates a reaction. Beginning in 1976, the Carter administration reduced the authority of the central Population Office, dispersed a third of the population staff throughout the Agency, reduced the supervision which professional population personnel exercised over country and regional projects, and demoted Dr. Reimert T. Ravenholt, the program's sometimes controversial director for 13 years.

While the rapid growth of government population programs throughout the world now makes it necessary for each region and each mission to have some expert population staff, the loss of authority and staff within the Population Office has not been offset by an increase in qualified population officers either overseas or in AID/Washington. For the last several years, AID population programs have to some extent been running on earlier momentum--a situation not helped by Congress' reluctance to appropriate new funds for two years in a row. A new infusion of high-level support from Congress and the new Administration is necessary to ensure that the program continues in an effective and innovative way to meet the growing demands for population and family planning programs in the developing countries.

II. Inadequacy of the Global Response to Population Problems

Over the last decade, again largely as a result of Congressional initiatives, the United States has taken the leadership in building global awareness of the population crisis and in convincing developing country governments to launch family planning programs. I recall that in the late 1960s and early 1970s we were virtually alone in this effort.

Today, however, nearly all other donor countries contribute to international population assistance and over 35 of the largest developing countries, representing nearly 80 percent of the Third World population, have explicit policies to reduce population growth. Some developing countries, such as Indonesia, are now providing from their own resources up to two-thirds of the funding required to support national population programs. The United States remains the largest population donor, accounting for about 40 percent of total donor assistance of about $450 million annually. Developing country expenditures on population (exclusive of China) amount to an estimated $750 million annually, bringing total annual expenditures up to about $1.2 billion.

It is important to note that presently only about 2 percent of development assistance from all donors is allocated to population programs. For total U.S. development aid, the proportion is about 5 percent. Over the last three years, U.S. population assistance has increased by only 2 percent while Japan, West Germany and several other European donors have doubled or tripled their contributions. Taking inflation into account, the current U.S. funding level of $190 million represents only about 66 percent of the spending power of the $121 million appropriated in 1972.

The Carter Administration's FY1982 AID budget, reflecting a belated attempt to prioritize various development assistance programs, contained a request for $346 million for population programs. Revised Reagan Administration budget proposals include $253.4 million for this account.

I realize that in the current climate of budgetary restrictions, an increase of 33 percent for population programs might seem rash. It is clear, however, that substantial amounts of additional funds are in fact needed immediately. While funds for population assistance from the United States have increased only two percent in the past two years, in the same period requests from developing countries have virtually exploded.

The result is that in FY1981, total available population assistance will fall short of existing project requests by over $150 million according to analysis made by the Population Crisis Committee. This PCC estimate is based on: specific shortfalls for U.S. bilateral country programs of at least $45 million; unfunded projects at UNFPA of about $125 million (of which the U.S. share is one-fourth to one-third); shortfalls among AID's PVO intermediaries in the family planning services area of nearly $30 million; training program shortfalls of over $8 million; unmet commodity requirements of $7.5 million; and operations research and other policy and program development shortfalls of $12 to $20 million.

We have been working hard for over a decade to convince developing countries to take population problems seriously. Now that many are finally galvanized into action and ready to move there are virtually no outside resources available to support new initiatives.

Brazil is a good example. Just a month ago, after years of equivocation, the Brazilian government finally made it first clear move toward support of a national family planning program with a $26 million request for technical and other assistance to United Nations Fund for Population Activities. Brazil is prepared to match this grant with $31 million of its own funds. Unfortunately UNFPA is not in a position to respond, given its $125 million shortfall in funding for projects already approved.

I am confident that a substantially increased appropriation could have dramatic results. Since 1966, when the first population funds were allocated, AID and the organizations it supports have gained considerable experience in a range of policies and programs designed to bring about rapid declines in birth rates. This experience convinces us that, although over the long-run there are many social and economic factors which may influence attitudes about childbearing, government and private agencies can do a great deal to affect contraceptive prevalence directly by providing subsidized family planning services and by creating a political climate that promotes contraceptive use and smaller families as social and individual benefits. One of the most important lessons learned from a decade of AID experience is that poor, largely illiterate rural women will practice contraception just as readily as educated urban women, if services are easily available at the village level from people they know and trust and if community leaders are committed to the program.

The key point is this: where well organized community-based family planning services exist and have public support, social and economic determinants of fertility such as education, income, urban residence, and child survival rates have much less significance. Where such services do not exist, these other factors have considerable influence over birth rates. Where good family planning services and favorable socio-economic conditions both exist, the effect seems to be synergistic. The ability of governments to implement an effective family planning program is, of course, affected by overall levels of development, but the more significant factor is probably political will.

It is important to recognize that considerable unmet demand for contraceptive services already exists and has been documented in many developing countries. Of these women interviewed by the World Fertility Survey, about one-third said their last birth was unwanted and half said they wanted no more children. About half of this latter group were not using any effective form of contraception.

The social and economic factors which contribute most effectively to increased acceptance of family planning and smaller family size norms include: a later age of marriage; higher education levels, especially for women; increased female participation in the wage labor force; improvements in infant and child survival rates; and general improvements in the quality of life and in economic opportunities for the poorest sectors.

All of these factors have been associated with birth rate declines, but their importance varies from country to country and exact cause-and-effect relationships have been difficult to demonstrate. And although in the long-run they surely create a more favorable climate for widespread acceptance of smaller family size norms, social and economic changes alone are neither necessary nor sufficient conditions for fertility change. They are clearly not a cost-effective substitute for family planning services. Experts estimate that the provision of subsidized family planning services will avert one unwanted birth in a low-income developing country at an average cost of $22. To accomplish the same result through investments in female education would cost $160 per birth averted, and through reductions in infant mortality, some $800 per birth averted. Health and education programs are, of course, well justified in their own right. The point is simply that the expansion of family planning services is the most direct, timely, and cost-effective way to reduce rapid rates of population growth.

As a result of public and private family planning efforts, today about one-third of married women ages 15 to 45 in developing countries have some access to family planning services. Just under one-fourth of these women are effectively practicing family planning. The increase over the last decade in contraceptive services, as well as in socio-economic changes encouraging their use, has resulted in a decline of the global annual population growth rate from a high of 2 percent in the early 1970s to the present level of 1.7 percent. Birthrates in over 30 developing countries have declined by 20 to 60 percent during the past decade.

If global resources for family planning services could be doubled by 1985 from about $1 billion to $2 billion, we could confidently expect a doubling of contraceptive prevalence by 1990--from 25 percent to 50 percent of the target population. A 50 percent prevalence rate in 1990, resulting in a birthrate decline from 35 births per 1,000 population to 28, would result in a half-billion fewer people in the year 2000--that is, world population could be 5.7 billion people instead of the 6.2 billion projected by the United Nations. (The total U.S. population is 226.5 million, and we currently comprise 5 percent of the world's population.)

Because the base on which future population growth will take place expands every year, the cost of reaching higher contraceptive prevalence levels also goes up. By the year 2000 the number of women of reproductive age will have increased by 33 percent. Most of these women are already born.

That a doubling of contraceptive prevalence can be achieved through a commitment of resources to family planning is indicated by the recent history of population programs in several key countries. Let me cite five examples which illustrate what sufficient resources, combined with sufficient political will, can achieve in a relatively short span of time.

Indonesia

The Indonesian population program, now beginning to reach its peak effectiveness, is a model for community-based family planning efforts. Its Village Contraceptive Distribution Centers, enlisting local volunteers to recruit and supply family planning acceptors, now consist of 25,000 village distribution centers--one for every village on the main islands of Java and Bali.

Recent surveys of contraceptive use show that in just five years the average completed family size has dropped by over a third in Bali and by nearly 20 percent in most of Java. In Bali, over three-quarters of the married women are using family planning--a rate of contraceptive practice comparable to that of the United States.

These successes are all the more significant in light of factors traditionally assumed to mitigate against the acceptance of family planning: a national per capita income of just $180 a year, an overall infant mortality rate of close to 150 deaths per 1,000 live births, 50 percent illiteracy among adult women, and a diversity of ethnic groups and religions.

Indonesia has made a good start at solving its overpopulation problem. As the world's fifth largest country with over 135 million people, its progress is highly significant in demographic terms, and it serves as a pacesetter for the rest of the developing world. Due largely to energetic leadership from top governmental officials and aggressive family planning and development programs, Indonesia has recently revised downward its population projections for the year 2000. There will be 50,000,000 fewer people than once expected. Still, even if birthrates continue to decline rapidly, there will be 215 million Indonesians by the turn of the century, and the number of women of reproductive age will have doubled, making additional population growth inevitable.

U.S. government commitments to the Indonesian program in the form of grants, loans and commodities have been crucial. They represent our largest outlay from the population account as well as our most stunning success.

Thailand

Thailand has earned an international reputation for using unique channels to reach remote rural villages with family planning information and supplies. It was the first country in the world to encourage oral contraceptive pill distribution through auxiliary medical workers. Today, community-based contraceptive distribution programs are operating in over one-third of all villages. In areas where these programs and government clinic services were available between 1974 and 1977, the number of births decreased by 40 percent. On a national scale, fertility has declined by about 20 percent and contraceptive use has risen 150 percent in the last six years.

The most rapid fertility declines have been achieved in the rural northern provinces which have had high-quality clinic and outreach services since 1970. In one such province, Chiang Mai, women are having an average of 2.6 children each, significantly lower than the national average of 4.5. Both these figures represent a sharp decline from the completed family size of women aged 45-49--an average of 6.8 children each. Today, 46 percent of married Thai women are using contraception. However, nearly half of those who do not want any more children are not using modern contraceptives, indicating that the total demand for family planning services has not yet been met.

USAID has supported the Thai program since 1967, providing both bilateral assistance and support through private agencies; UNFPA is also a major supporter.

Colombia

In the past decade, Colombia has experienced the most rapid fertility decline of any country in Latin America: a 29 percent decline in its birthrate between 1965 and 1976. During this period, Colombia has had one of the most active and successful family planning campaigns conducted in a developing country. A University of Chicago study concluded that up to 62 percent of the fertility decline could be directly attributed to organized family planning programs.

Profamilia, the private family planning association established in 1964, was among the first to use mass communication to provide family planning information to the public, to establish large-scale voluntary sterilization programs for both men and women, and to sponsor community-based distribution of contraceptives to both rural and urban areas. Since 1970, the Colombian government has provided family planning services through clinics and hospitals and has supported communication and training activities.

The World Fertility Survey found that 52 percent of all married Colombian women were using contraception in 1976. Nevertheless, the demand for additional family planning services still exists: 44 percent of the women who did not want any more children were not using any form of contraception.

USAID has supported Colombia's program through various private agencies and the UNFPA.

Korea

Korea has one of the oldest and most effective family planning programs in East Asia. Since 1960, its birth rate has been nearly halved. It is now equal to that of Taiwan, which has a much higher per capita gross national product and a more urbanized population.

Korea is one of the few countries where family planning services are widely available in rural as well as urban areas. The Mothers' Clubs organized by Planned Parenthood Federation of Korea cover more than half of Korea's 45,000 villages and offer a unique support system to women using family planning, as well as a channel for information and supplies. The Korean government has provided family planning services since 1962. Knowledge of contraception is virtually universal, and 46 percent of the married women are using contraception. A cost/benefit analysis found that the national family planning program, which cost $41 million from 1962 to 1973, averted some 2.4 million births at a savings of $2.9 billion in government expenditures.

Korean officials are focusing their efforts on "problem groups" such as those couples who prefer sons, unmarried women, and those using ineffective methods. More than half of the women who do not want any more children are not using an effective method of contraception.

USAID has provided bilateral assistance as well as funding through private organizations and the UNFPA.

Mexico

Mexico's national family planning program, announced in 1972 but not fully launched until 1974, has already begun to show dramatic results. In the first two years of the national family planning program, 1.9 million new acceptors were recruited by official health institutions. The proportion of married women using contraception increased from about 10 percent in 1970 to approximately 30 percent in 1976. Preliminary data indicate that by mid-1978 the prevalence rate had risen to 47 percent. No other country of Mexico's size can claim such a rapid increase in contraceptive use in just 18 months.

One attendant benefit has been a decrease in the incidence of illegal, largely self-induced, abortions. One government agency reported that the number of women treated for abortion complications in its clinics was halved between 1972 and 1978.

Mexico's population is still growing at 3.1 percent annually--a doubling time of only 22 years--but the rapid adoption of family planning suggests that substantial changes in fertility patterns are underway. More than half (56 percent) of the married women surveyed in a 1976 study said they wanted no more children.

USAID has provided assistance through UNFPA, the World Fertility Survey, IPPF, FPIA and other private organizations.

III. Population Growth and U.S. Security

Let me turn now to a less optimistic note and talk briefly about why it is in the U.S. interest to give these kinds of population programs high priority. The future of countries like Mexico, Indonesia and Korea is of obvious importance to the United States. But there are several dozen other countries in the developing world whose future economic and political viability is also in one sense or another vital to the medium- and long-range security interests of the United States or its allies in the industrialized world.

These include countries which are among the principal sources of petroleum and strategic minerals, countries which straddle or border major sea lanes or provide important points of military access, and countries whose shift to the Soviet sphere of influence would cause a serious realignment in regional balances of power. Nearly all these countries, like the countries I've just described, are plagued with serious population pressures. And these pressures threaten their basic economic and political viability, and in some cases their peaceful coexistence with neighboring states. I have appended to my testimony a number of charts which illustrate these points in some detail.

Typically, these countries have population growth rates four to five times higher than Western industrialized countries, and their growth rates translate into population doubling times of just 20 to 35 years. In nearly all of these countries, huge shantytowns have grown up around the major cities, and urban unemployment rates, especially among young people, have sky-rocketed. These conditions contribute to a steady increase in urban crime and political violence and seriously affect the ability of governments to govern.

In an effort to satisfy the rising expectations of a burgeoning population, these countries have accumulated huge amounts of external debts. Under the additional pressures of high energy costs and worldwide inflation, some countries have already been pushed to the brink of bankruptcy. Without strong, immediate action to curb population pressures, it is now clear that most of these countries will be unable over the next 20 years to maintain the kinds of open, stable economic and political institutions compatible with U.S. interests. Any number of them could become the next Iran or El Salvador.

Let me review just a few of the indicators of this impending economic and political crisis in the Third World. First, while populations in industrialized countries are doubling only every 113 years, populations in developing countries exclusive of China are doubling every 29 years, on average, and some countries, like Kenya, are doubling in 18 years. Even more alarming, however, is the outlook for cities. In many developing countries, particularly those in South Asia and Africa, urban areas are doubling in as little as 10 or 15 years as a result of continued high urban birthrates as well as massive farm-to-city migration. Because of rapid population growth over the past two decades, developing country populations are very young; these young people, in the volatile 15-25 age group, make up the bulk of migration to urban areas. In most of these countries some two-thirds of the urban population is under age 25. Unemployment rates among these urban youth are 30 percent or higher in most of the capital cities.

According to General William Westmoreland, writing in January of this year to Secretary of State Haig, these pressures provide a demographic basis for growing civil disorder and terrorism. Whatever immediate action we take to curb terrorism, we should also be farsighted enough to work now on those underlying population factors contributing to urban chaos and problems of governance throughout the developing world. Another measure of growing frustration is the lack of per capita income growth despite substantial rates of growth in overall GNP. In several Latin American and African countries (for example Panama and Zimbabwe), high rates of population growth mean that per capita GNP is actually declining, and in a number of others (for example Mexico and Pakistan) it is barely holding its own. In part because population pressures contribute to such heavy demands for immediate consumption, internal savings contribute little to economic growth. The result is that in a number of countries the increase in external debt between 1970 and 1978 was 700 or 800 percent, and external debt accounted for as much as 70 to 80 percent of GNP in 1978.

Let me now turn more specifically the problem of burgeoning Third World cities. Mexico City had only 5 million people 20 years ago. Today it is one of the world's largest cities, with 15 million people. In the next 20 years, at current growth rates, it is projected to top 30 million. Cities this size are off the scale of human experience. Perhaps more than half of Mexico City's present inhabitants live in squatter settlements which are estimated to double in size every eight years, more than twice as fast as the city as a whole. In Cairo, to take another example, squatter settlements are estimated to consist of 60 percent of the city. More than 80 percent of Cairo's growth is, moreover, attributable to high urban birthrates with the remainder due to migration from rural areas.

Population pressures such as these are rarely the immediate visible cause of political upheavals, but they are, with increasing frequency, an important conditioning factor. Until recently these relationships have received very little attention. But the events of the last several years suggest that we ignore them at our own peril. Where populations are doubling every 20 to 30 years and capital cities every 10 to 15 years, governments are hard pressed to maintain current standards of living, much less to meet popular demands for more and better food, jobs, housing, schools and hospitals. The inevitable clash between rising expectations and diminishing hopes undermines public confidence in free market economic institutions and democratic political ideals. As resentment and frustrations grow, new opportunities are created for extremist forces of both the right and the left. In Iran, for example, competent observers such as former Under Secretary of State George Ball cite conditions in Tehran's overcrowded slums as an important contributing factor to the 1978-79 upheavals. In El Salvador, a 1967 cable from the U.S. ambassador predicted the present civil disorder based on El Salvador's failure to curb population pressures.

The same pressures have been implicated in the 1969 Soccer War between El Salvador and Honduras and in the several clashes between India and Pakistan, including that which resulted in independence for Bangladesh. The contribution of population pressures to regional tensions was well described in a 1974 paper by General Maxwell Taylor. He stated:

> . . . "While it is difficult to predict specific contingencies which may arise, we have a suggestive example in the recent triangular conflict in India, Pakistan and what is now Bangladesh. When one seeks its causes, they are found to include chronic hunger resulting from excessive population coupled with long-term dissatisfaction with the central Pakistani government which in late 1970 peaked in the wake of destructive floods. Thereafter, millions of East Pakistanis fled into India to escape government harassment, starvation, floods or all three. This wave of refugees adding to social burdens in an already overcrowded province of India, together with the traditional animosity between the Hindus and Moslems, provided a sufficient excuse for Indian military intervention and the war which, in the end, was a disaster to all parties.
>
> "The fear of the growing population of a neighbor may be another factor conducive to armed conflict. Israel is certainly aware that its immediate Arab neighbors will increase from about 50 to 70 million in the next decade while the Israelis add perhaps one million to their total. Elsewhere in the same period, Indonesia will grow from about 130 million to 180 million while Australia increases from 13 to 17 million. Argentina will grow from about 25 million to 30 million while its neighbor Brazil will add some 50 million to reach a population over 140 million. Such conditions are sure to cause serious concern to any government responsible for the security of a small country with a sparse population overshadowed by a populous neighbor who, even if not presently bellicose, may at some future time feel intolerably crowded or hungry."

I would add, with respect to General Taylor's observation on the Middle East, that even if the Arab-Israeli conflict ceased to exist tomorrow, demographic pressures would probably still help to keep the region in a state of turmoil. I should like at this point, Mr. Chairman, to submit for the record a letter which General Taylor sent last year to members of the Senate and which further elaborates these points.

In summary, continued high rates of population growth place unreasonable demands on the already shaky economic and political structures of most developing countries. If economic conditions worsen worldwide, many of these countries will move even closer to the brink of bankruptcy and political collapse.

Population control will not ensure prosperity and stability and will certainly not do so in the short run. But uncontrolled population growth will certainly ensure that, increasingly over the next 20 years, many of those countries where vital U.S. security interests are at stake will find it impossible to meet the legitimate development goals of their people. And, against a background of popular frustration, urban squalor and unemployment, they will also find it impossible to defend themselves against internal upheaval and external threats to their independence except by excessive dependence on military force and repression.

Nothing could be more in our interests and theirs than programs designed to lessen population pressures. These programs deserve to receive all the resources they can effectively spend.

Urbanization Trends in Selected Principal Cities

Region/City	Annual Growth Rate (1970-1975)	Percent Annual Growth due to Immigration*	Population (millions)			Slums and Squatter Settlements Doubling Times	Slums and Squatter Settlements as Percent of Population
			1960	1980	2000		
Latin America							
Mexico City (Mexico)	5.6%	43%	5.12	15.04	31.04	46% (in 1970)	8 years
Rio de Janeiro (Brazil)	4/6%	39%	4.47	10.65	18.96	30% (in 1970)	13 years
Caracas (Venezuela)	4.6%	37%	1.33	3.27	5.71	40% (in 1974)	6 years
East Asia							
Seoul (Rep. of Korea)	5.0%	60%	2.36	8.45	13.68	30% (in 1970)	1.2 years
Manilla (Philippines)	4.5%	27%	2.29	5.53	11.43	35% (in 1972)	13 years
Jakarta (Indonesia)	4.9%	47%	2.71	7.17	15.72	26% (in 1972)	15 years
West Asia/Middle East							
Greater Bombay (India)	3.5%	31%	4.15	8.36	16.78	45% (in 1971)	4 years
Bagdad (Iraq)	8.4%	60%	1.02	5.11	11.04	29% (in 1965)	n/a
Istanbul (Turkey)	6.8%	63%	1.45	5.17	10.80	40% (in 1970)	6 years
Greater Cairo (Egypt)	3.1%	16%	3.73	7.35	12.86	60% (in 1976)	n/a
Africa							
Nairobi (Kenya)	9.4%	65%	.24	1.33	5.27	33% (in 1970)	3 years
Lagos (Nigeria)	12.6%	79%	.12	1.24	4.99	n/a	n/a
Lusaka (Zambia)	11.6%	73%	n/a	.76	2.26	48% (in 1969)	1.5 years

Sources: United Nations, *World Housing Survey*, 1974; and Department of International Economic and Social Affairs Working Paper No. 66, 1980.

World Bank, Staff Working Paper #336, June 1979; and O.F. Grimes, *Housing for Low-Income Urban Families*, 1976.

IDRC, *Housing Asia's Millions*, 1979.

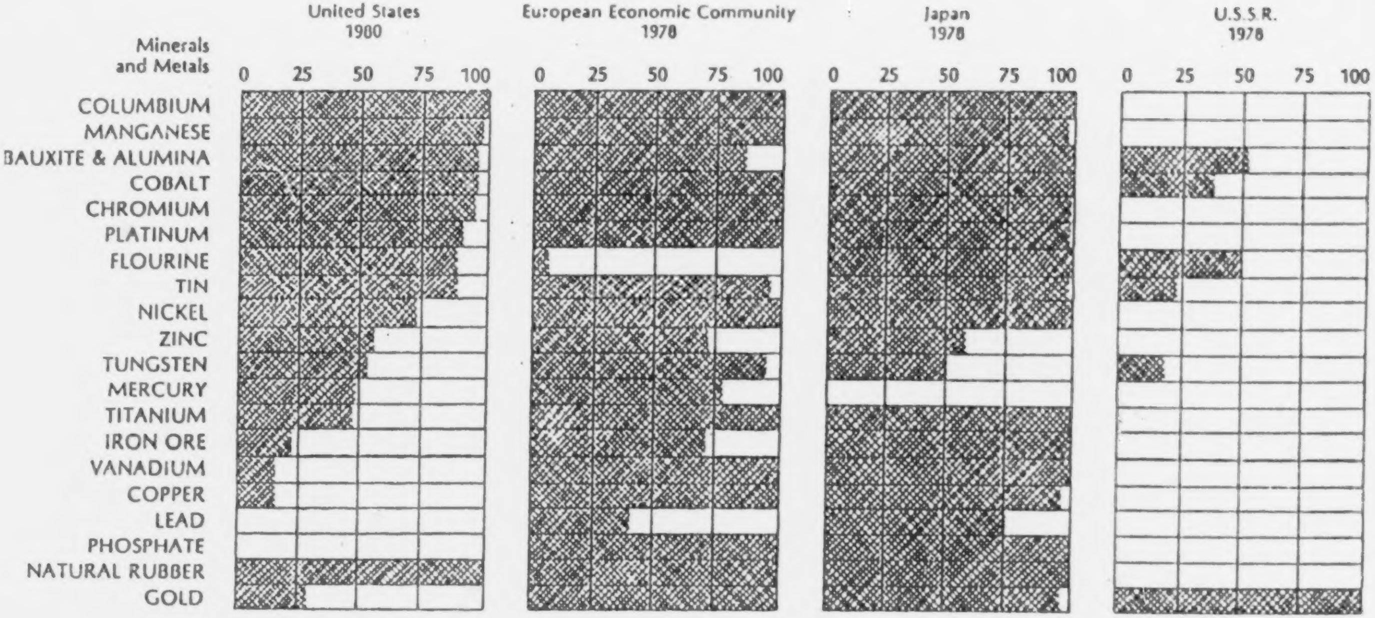
AID, Office of Housing, *Immediate Action Proposals for Housing in Egypt, Statistical Appendix*, 1976.

*Calculated from difference between urban growth rate (1970-75) for principal city and 1975 rate of natural increase for country, divided by urban growth rate (1970-75) for principal city.

n/a= not available

Reliance of the United States, the European Economic Community, Japan and the U.S.S.R. on Imports of Critical Raw Materials

(Imports as Percent of Consumption)



Note: Shaded area indicates imports as percent of consumption

primary source: Bureau of Mines, U.S. Department of the Interior

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April 14, 1980

As one who has spent his adult life in matters dealing with national security, I am writing to express my concern over a general lack of appreciation of a major threat to our national security--the consequences of the worldwide population explosion. Up to now, population growth has been usually regarded as a problem of a relatively low priority to be dealt with by a modest annual A.I.D. appropriation. Its relationship to national security has gone unnoticed.

This relationship can be simply stated. Our national security interest in maintaining a global balance of power and global restraints on Soviet aggression depends on the continued viability, and economic, social, and governmental stability of a number of strategically located developing nations. Our national strength also depends on a strong economy which, in turn, depends on assured access to certain essential sources of raw materials--primarily oil and scarce minerals--located in Third World countries. Such access requires the maintenance of comparative peace and stability within these nations and their regional environment.

But such conditions cannot presently be assured. These countries are all suffering from degenerative and disruptive forces resulting from demographic growth rates which will double their population in the next 20 to 25 years. They include countries of vital interest to us such as Iran, Saudi Arabia, Egypt, Turkey, Nigeria, Mexico, Brazil, Venezuela, the Philippines and Indonesia. Most of them have raw materials that our economy badly needs. A few, such as Turkey, Egypt, Pakistan, and Iran, also have political and military value as U.S. allies or as buffers affording protection to Middle East oil fields. All have internal problems of varying urgency arising wholly or in part from population growth which, if unresolved, will render doubtful their longterm reliability as stable allies or trading partners.

To add to their difficulties, the regional environment of such countries will become more and more characterized by turmoil and conflict. Most of their neighbors are have-not countries suffering from shortages of land, food, capital, energy and jobs, and hence unable to meet the essential needs of their people. As a bloc, the have-nots are resentful and envious of the affluent capitalist states, of which the U.S. is the archetype. They are united in demanding a redistribution of wealth and the establishment of a new world economic order that will correct past inequities. Their movement has the strong support of the Soviet Union which aspires to leadership of this alignment of the South against the North.

In such an environment we may expect terrorist violence and frequent armed conflicts to arise within and between nations in their struggle for the scarce necessities of life. A densely populated country is always a potential enemy to a neighbor with markedly fewer people. The latter may expect spontaneous overflows of unwanted migrants across its borders, such as we are experiencing from Mexico, or a military invasion such as Pakistan fears from India, Israel from its teeming Arab neighbors, and South Africa from hostile black majorities on its borders. It is ominous to note that these three threatened nations are all suspected of having or seeking to acquire nuclear weapons to offset the numerical advantages of dangerous neighbors.

Under such conditions as the foregoing, excessive population growth is clearly a malevolent force, not merely because of its adverse effect upon conditions within essential markets and the strife created in the Third World community. In doing these things, population growth acts as a priceless ally to the Soviet Union in the pursuit of its periennial goal of world revolution and eventual hegemony over the global political-economic system that ensues. Such conditions provide the troubled waters in which Soviet fishermen can ply their subversive skills at will, as they have demonstrated of late in such places as Iran, Ethiopia, Nicaragua and Grenada. To the extent that our government can neutralize the effects of excessive population growth in regions of special interest to us, it provides protection to our vulnerable economy and forestalls further Soviet gains in the Third World.

For the foregoing reasons, I would urge you and your colleagues in making legislative and budgetary decisions in this difficult year to give due weight to the national security aspect of those projects which contribute to curbing this clear threat to our long term national interests.

Sincerely yours,

Maxwell D. Taylor
General, U.S. Army, Ret.

MDT:ah

Enclosure

Estimated Costs to Avert One Birth
in a Low-Income Developing Country

Single Intervention	Basis of Calculations	Cost
Family Planning Field Worker Visits	($2 per visit times 11 visits to avert one birth)	$ 22
Female Education	($10 per woman year of education times 8 years to avert 0.5 births per woman educated)	$ 160
Reduction in Infant Mortality	($20 per family for nutritional program to prevent one infant death out of 450 live births and to thus avert one additional birth)	$ 800
Rise in Per Capita Incomes for Poor	($4.38 million to increase incomes one percent of poorest 40% of population; 1,440 births averted)	$3,042

Note: No allowance has been made for the possible synergistic effects of a combination of direct and indirect interventions. In actuality, the costs of the three non-family planning programs might be higher because the cost of a method of direct birth prevention has not been included.

Source: Adapted from George B. Simmons, "Family Planning Programs or Development: How Persuasive Is the New Wisdom?", International Family Planning Perspectives, Vol. 5, No. 3, Sept. 1979, p. 107.

Table 1
Population and Development Indicators for Selected Developing Countries

Country	Importance	Population Growth			Urban Concentration			Economic Development			External Public Debt		
		Total Population Mid-1981 (millions)	Annual Population Growth Rate, 1981	Total Population Doubling Time, 1981	Percent Living in Urban Areas, 1980	Urban Population Doubling Time, 1980	Urban Population Under age 25, 1975	Per Capita Income (U.S. dollars) 1978	Percent Annual Increase 1970-1977	Physical Quality of Life Index (PQLI) 1980	Total National Debt, 1978 ($billions)	Percent Increase 1970-1978	[illegible]
More developed countries		1,144	0.6%	113 years	69%	49 years	42%	$6,468	3.3%	94	—	—	—
Less developed countries		3,348	2.1%	34 years	29%	18 years	59%	597	3.4%	57	$128.1	n/a	
Latin America													
Brazil	size and location major source columbium, manganese, iron	121.4	2.4%	29 years	61%	18 years	59%	$1,570	6.7%	69	$ 28.0	701%	15
Mexico	size and location major exporter – petroleum, fluorine, lead	69.3	2.5%	28 years	65%	16 years	65%	1,290	1.2%	76	25.4	696%	28
Venezuela	major petroleum exporter	15.5	3.0%	23 years	75%	17 years	65%	2,910	3.2%	79	6.9	851%	17.1
Chile	major source copper	11.2	1.5%	47 years	80%	29 years	55%	1,410	-1.8%	79	4.4	111%	26.2
El Salvador	key U.S. political concern	4.9	3.2%	22 years	39%	20 years	63%	600	2.1%	66	0.3	270%	11
Panama	canal	1.9	2.2%	31 years	51%	19 years	n/a	1,290	-0.1%	81	1.9	885%	8
East Asia													
China	size and location source petroleum, minerals	985.0	1.2%	59 years	26%	23 years	51%	460	4.5%	71	n/a	n/a	
Indonesia	size and location major shipping lanes, major exporter – petroleum, tin, rubber	148.8	2.0%	35 years	18%	17 years	65%	360	5.7%	55	13.1	436%	27
Philippines	U.S. military ally, Manila Pact U.S. bases source chromium, copper	48.9	2.4%	29 years	32%	17 years	64%	510	3.7%	72	4.2	562%	18
Thailand	U.S. military ally, Manila Pact source tin, tungsten, rubber	48.6	2.0%	35 years	13%	17 years	64%	490	4.1%	75	1.8	457%	8
Rep. of Korea	location near North Korea presence U.S. troops [illegible]	38.9	1.7%	41 years	48%	16 years	60%	1,160	7.6%	83	12.0	567%	26

[illegible] Asia												
India	size and location source manganese, iron, rubber	688.6	2.1%	33 years	21%	19 years	61%	180	1.1%	43	15.3	91%	[illegible]
Pakistan	size and location next U.S.S.R.	88.9	2.8%	25 years	26%	15 years	67%	230	0.8%	38	7.6	147%	[illegible]
Turkey	NATO's eastern anchor strait shipping lane source chromium	46.2	2.2%	32 years	45%	16 years	60%	1,210	4.5%	60	6.2	214%	[illegible]
Middle East												
Iran	size, location, borders U.S.S.R. strait shipping lane major petroleum exporter	39.8	3.0%	23 years	47%	14 years	63%	n/a	n/a	52	8.3	276%	
Iraq	major petroleum exporter	13.6	3.4%	20 years	66%	13 years	67%	1,860	7.1%	45	0.9	220%	[illegible]
Saudi Arabia	#1 petroleum exporter strait shipping lane	10.4	3.0%	23 years	24%	12 years	63%	8,040	13.0%	29	n/a	n/a	[illegible]
North Africa												
Egypt	key to Mid East settlement Suez canal	43.5	3.0%	23 years	44%	20 years	62%	400	5.2%	52	9.9	503%	[illegible]
Morocco	strait of Gibraltar source phosphates	21.8	3.0%	23 years	42%	14 years	66%	670	4.2%	43	5.1	621%	[illegible]
Algeria	major petroleum exporter	19.3	3.2%	22 years	55%	12 years	67%	1,260	2.1%	45	13.2	1,805%	[illegible]
Sub-Saharan Africa												
Nigeria	size major petroleum exporter	79.7	3.2%	22 years	20%	11 years	61%	560	4.4%	28	2.2	156%	[illegible]
Zaire	major source cobalt, copper	30.1	2.8%	25 years	30%	11 years	64%	210	-1.4%	32	2.6	725%	[illegible]
South Africa	major source manganese, chromium, platinum, flourine, vanadium, gold	29.0	2.4%	29 years	48%	21 years	55%	1,480	1.1%	60	5.7	424%	[illegible]
Kenya	location — important for Persian Gulf strategy	16.5	3.9%	18 years	10%	10 years	59%	320	0.9%	48	1.0	204%	17.9%
Zimbabwe	key to stability in Southern Africa	7.6	3.4%	21 years	20%	11 years	57%	480	-0.1%	46	n/a	n/a	[illegible]
Zambia	major source cobalt, copper	6.0	3.2%	22 years	19%	11 years	66%	480	-0.2%	43	1.4	114%	[illegible]

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natural increase: exclusive of emigration and immigration

per capita GNP 1978

The Physical Quality of Life Index, developed by the Overseas Development Council, Washington, D.C., is a non-income measure of the many aspects of human well-being. It combines three indicators—infant mortality, life expectancy at age one, and literacy—into a single composite index. On a scale of 0-100, 0 is the lowest level of well-being, and 100 is the highest.

Sources: Population Reference Bureau, Inc., World Population Data Sheet, 1980; United Nations, Dept. of International Economic and Social Affairs, Working Papers No. 66 (1980) and No. 64, 1979; World Bank, *World Development Report, 1980*; Overseas Development Council, *The United States and World Development: Agenda, 1980*.

Sources of 19 Critical Raw Materials

RAW MATERIALS	SUBSTITUTES	MAJOR PRODUCERS • 1977	PERCENT OF WORLD PRODUCTION 1977	CRITICAL USE
COLUMBIUM	some	Brazil	74	—critically important for nuclear and aerospace industries, rockets and missiles, boiler steel, refinery equipment, transistor circuits, gas pipeline steel, abrasives
		Canada	16	
		U.S.S.R.	6	
MANGANESE	none	U.S.S.R.	34	—essential for steel, dry cell batteries; production cast iron & aluminum, fertilizers, mining machinery, heavy duty machinery, chemical reagent
		South Africa	24	
		Gabon	11	
		Australia	8	
		India	7	
		Brazil	5	
		China	5	
BAUXITE AND ALUMINA	some	Australia	30	—use exceeds that of any other metal except iron, aircraft fuselage; auto pistons, automobiles, refractories, industrial crucibles
		Guinea	15	
		Jamaica	14	
		Surinan	7	
		U.S.S.R.	5	
COBALT	some	Zaire	36	—vital alloying element for aero-space & electrical products industries, turbines, jet engines, superchargers; radio & x-ray tubes; tool steels, machinery, drill bits, missle controls and propulsion systems; synfuel gasification plants, computer hardware
		New Caledonia	14	
		Australia	12	
		Zambia	8	
		U.S.S.R.	6	
		Cuba	6	
CHROMIUM	almost none	South Africa	34	—important iron and steel alloying element; essential ingredient in stainless steel, armor plate for ships, tanks, safes, high speed cutting tools; chrome electroplating; super alloys for jet engines
		U.S.S.R.	25	
		Albania	9	
		Turkey	7	
		Zimbabwe	7	
PLATINUM GROUP METALS	some	South Africa	65	—chemical catalyst for automotive, chemical & petroleum refining industries, catalytic converters, electrical industry
		U.S.S.R.	26	
		Canada	7	
FLOURINE	some	Mexico	20	—flux for crude steel & aluminum production
		U.S.S.R.	11	
		Spain	9	
		France	8	
		South Africa	7	
		China	7	
		Mongolia	7	
TIN	many but not as satisfactory	Malaysia	25	—tinplate, element in bronze and brass, solders, bearings, pipes, electrical industry, reagents
		U.S.S.R.	14	
		Bolivia	14	
		Thailand	10	
		Indonesia	10	
		China	9	
NICKEL	few	Canada	30	—vital alloying element for iron, steel, and aerospace industries; jet engines, aircraft frames, cast iron; armor plate, gun barrels, rocket motor cases; desalination plants; oil refineries
		U.S.S.R.	19	
		New Caldonia	14	
		Australia	11	
		Cuba	5	
ZINC	some	Canada	21	—production bronze and brass; medicines; rubber processing; radio condensers & tube shields, photosensitive copying paper
		U.S.S.R.	12	
		Australia	8	
		Peru	7	
		U.S.	7	
TUNGSTEN	some	China	21	—high speed metal working & machinery; incandescent lamps; high velocity armor-piercing projectiles; high pressure equipment; jet engines, gas turbines, surgical instruments
		U.S.S.R.	19	
		Bolivia	7	
		U.S.	6	
		Rep. of Korea	6	
		Australia	5	
		North Korea	5	
		Thailand	5	
MERCURY	few	U.S.S.R.	29	—catalyst for plastics, resins, acetic acid, chlorine-caustic soda; pressure gauges; pharmaceuticals; electric batteries; thermostats; mercury vapor lamps
		Spain	19	
		U.S.	14	
		China	10	
		Mexico	8	
TITANIUM	almost none	Australia	35	—jet engines, high-performance jets; supersonic aircraft frames; space vehicles, missle parts; chemical processing equipment; power generation equipment; submarines
		Canada	19	
		Norway	14	
		U.S.	14	
		U.S.S.R.	8	
IRON ORE	none	U.S.S.R.	28	—principal ingredient in all types of steel
		Australia	12	
		Brazil	11	
		Canada	7	
		U.S.	7	
		China	7	
		India	5	
VANADIUM	some	South Africa	39	—alloying element for steel, jet engines & air frames, construction equipment; oil and gas pipelines; breeder nuclear reactors, permanent magnets, automobiles
		U.S.S.R.	31	
		U.S.	16	
		Finland	6	
COPPER	many	U.S.	18	—electrical conduction, wiring; electric motors & generators; power distribution; communications equipment; industrial controls, tubes and pipes; alloys for ship hulls
		Chile	14	
		U.S.S.R.	11	
		Canada	10	
		Zambia	9	
		Zaire	6	
		Peru	5	
LEAD	some	U.S.	16	—vehicle batteries; ammunition; paints and pigments; electrical cable sheathing; nuclear shielding
		U.S.S.R.	15	
		Australia	13	
		Canada	8	
		Peru	5	
		Mexico	5	
PHOSPHATE	none	U.S.	41	—fertilizers; industrial chemicals
		U.S.S.R.	21	
		Morocco	15	
NATURAL RUBBER	only for certain purposes	Malaysia	4	—high performance aircraft & truck tires; medical & surgical goods
		Indonesia	24	
		Thailand	14	
GOLD	some	South Africa	58	—underpins world monetary system, industrial uses, electronic industry
		U.S.S.R.	20	

SOURCES: U.S. Dept. of Interior, Bureau of Mines *Mineral Commodity Summaries 1980*, *Minerals in the U.S. Economy*, 1979.
U.S. House of Representatives, Subcommittee on Mines and Mining, 1980.
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PREPARED STATEMENT OF SHARON L. CAMP, PH. D. BEFORE THE HOUSE FOREIGN AFFAIRS COMMITTEE

Mr. Chairman, Committee members. Thank you for the opportunity to appear today on behalf of the Population Crisis Committee and to share with you what we consider to be pertinent new information on international population problems and programs.

I am Dr. Sharon Camp, Director of PCC's Education and Public Policy Division. PCC is a private non-profit organization which has, since its establishment in 1965, been a leader among population organizations in efforts to strengthen political and financial support for family planning overseas. Our work involves high-level advocacy at home and abroad to increase government commitment and also selective support of innovative private family planning programs in developing countries. It is perhaps important to state that we receive no U.S. government money for any part of our U.S. operations or overseas grant programs. Thus, while we may express strong opinions about the direction of U.S. population assistance, these comments are not motivated by any fiduciary interest in the program. Since parts of my statement touch on the need to improve contraceptive technology and encourage greater participation of women in development, I should perhaps also mention that I chair the Board of the International Fertility Research Program and the Board of the International Center for Research on Women.

My testimony today is divided into three parts. The first deals with recent population trends, particularly rapid urbanization, and the impact which these trends are now clearly having on global security. The second deals with recent changes in developing country attitudes toward population and family planning and their implications for funding requirements. The third section represents an effort to summarize what we now know about the relative cost- and time-effectiveness of different government policies to encourage voluntary fertility reductions.

I. Population Growth and Global Security

The relationship between rapid world population growth and global security, as it now appears to be developing, can be stated quite simply. There are several dozen countries in the developing world whose future economic and political viability is in one sense or another vital to the medium- and long-range security interests of the United States and its allies in the industrialized world. These include countries which are among the principal sources of petroleum and strategic minerals, countries which straddle or border major sea lanes or provide important points of military access, and countries whose shift to the Soviet sphere of influence would cause a serious realignment in regional balances of power. Nearly all these countries are plagued with serious population pressures and these pressures threaten their basic economic and political viability, and in some cases their peaceful coexistence with neighboring states.

Typically, these countries have population growth rates four or five times higher than Western industrialized countries, and these growth rates translate into population doubling times of just 20 to 35 years. In nearly all of these countries, huge shantytowns have grown up around the major cities, and urban unemployment rates, especially among young people, have sky-rocketed. These conditions contribute to a steady increase in urban crime and political violence and seriously affect the ability of governments to govern.

In an effort to satisfy the rising expectations of a burgeoning population, these countries have accumulated huge amounts of external debts, and under the additional pressures of high energy costs and worldwide inflation, some have already been pushed to the brink of bankruptcy. Without strong immediate action to curb population pressures, it is now clear that most of these countries will be unable over the next 20 years to maintain the kinds of open, stable economic and political institutions compatible with U.S. interests. Any number of them could become the next Iran or El Salvador.

I would call the Committee's attention to Table I on page 3 which lists roughly 25 developing countries of special importance to the United States and its allies, along with basic population and development indicators. Several things stand out. First, while populations in industrialized countries are doubling only every 111 years, populations in developing countries are doubling every 34 years, on average, and some countries, like Kenya, are doubling in 18 years. Even more alarming, however, is the outlook for cities. In many developing countries urban areas are doubling in as little as 10 or 12 years (see Table I, column 7), as a result of continued high urban birthrates as well as massive farm to city migration. Because of rapid population growth over the past two decades, developing country

Population and Development Indicators for Developing Countries of Strategic Importance to the U.S.

Country	Strategic Importance	Population Growth: Total Population Mid-1980 (millions)	Annual Population Growth Rate, 1980[1]	Total Population Doubling Time, 1980	Urban Concentration: Percent Living in Urban Areas, 1980	Urban Population Doubling Time, 1980	Urban Population Under age 25, 1975	Economic Development: Per Capita Income (U.S. dollars) 1978[2]	Percent Annual Increase 1970-1977	Physical Quality of Life (PQLI) 1980[3]	External Public Debt: Total External Debt, 1978 ($ billions)	Percent Increase 1970-1978	As a Percent of GNP, 1978
More developed countries		1,131	0.6%	[illegible] years	67%	69 years	42%	6,960	3.2%	94	—	—	—
Less developed countries		3,183	2.0%	35 years	29%	15 years	59%	597	3.6%	57	178.3	n/a	n/a
Selected countries:													
Latin America													
Mexico	major petroleum exporter source strategic minerals strategic size and location	68.2	3.1%	22 years	65%	16 years	63%	1,290	1.2%	73	23.3	696%	28.7%
Panama	shipping lane choke point	1.9	2.2%	31 years	51%	19 years	n/a	1,290	0.1%	81	1.9	851%	80.1%
El Salvador		4.8	3.3%	21 years	39%	30 years	63%	620	2.1%	66	.9	278%	11.0%
Venezuela	major petroleum exporter	13.9	3.0%	23 years	75%	17 years	63%	2,910	3.2%	79	6.9	831%	17.1%
Brazil	source strategic minerals strategic size and location	122.0	2.8%	25 years	61%	18 years	55%	1,570	6.7%	69	28.8	705%	13.6%
Chile	source strategic minerals shipping lane choke point	11.1	1.6%	43 years	80%	29 years	55%	1,410	1.8%	79	4.9	111%	28.7%
East Asia													
Rep. of Korea	source strategic minerals shipping lane choke point strategic location	38.2	1.6%	44 years	48%	16 years	60%	1,160	7.6%	81	12.0	387%	26.1%
China	source strategic minerals shipping lane choke point	975.0	1.2%	58 years	26%	23 years	31%	460	5.1%	71	n/a	n/a	n/a
Philippines	source strategic minerals strategic location	47.7	2.4%	28 years	32%	17 years	64%	510	3.7%	72	6.2	567%	18.0%
Thailand	source strategic minerals strategic location	47.3	2.3%	30 years	13%	17 years	60%	490	4.1%	71	1.8	412%	8.2%
Indonesia	major petroleum exporter source strategic minerals shipping lane choke point strategic size and location	144.3	2.0%	35 years	18%	17 years	63%	360	5.1%	55	13.1	416%	27.6%
West Asia													
[illegible]	[illegible] strategic minerals	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	11.1	95%	11.1%
											7.6	187%	60.8%
Pakistan	strategic location	86.5	2.8%	25 years	26%	13 years	67%	230	0.8%	38	7.6	187%	60.8%
Turkey	source strategic minerals shipping lane choke point strategic location	45.5	2.3%	30 years	45%	16 years	60%	1,210	4.1%	60	9.2	336%	17.2%
Middle East													
Iran	major petroleum exporter shipping lane choke point strategic size and location	38.5	3.0%	23 years	47%	16 years	63%	n/a	n/a	37	8.3	276%	n/a
Iraq	major petroleum exporter shipping lane choke point	13.2	3.4%	20 years[1]	66%	13 years	62%	1,860	7.1%	43	.9	170%	6.0%
Saudi Arabia	#1 petroleum exporter shipping lane choke point	8.2	3.0%	23 years	24%	12 years	61%	8,040	11.0%	29	n/a	n/a	n/a
North Africa													
Egypt	shipping lane choke point strategic location	42.1	2.7%	26 years	45%	20 years	62%	400	5.2%	52	9.9	901%	71.9%
Algeria	major petroleum exporter source strategic minerals	19.0	3.4%	20 years	53%	12 years	67%	1,260	2.1%	41	15.2	1,803%	32.6%
Morocco	source strategic minerals shipping lane choke point	21.0	3.0%	23 years	42%	15 years	66%	670	4.2%	41	5.1	621%	40.1%
Sub-Saharan Africa													
Nigeria	major petroleum exporter strategic size	77.1	3.2%	22 years	20%	13 years	61%	560	4.0%	28	2.2	156%	6.3%
Kenya	strategic location	15.9	3.9%	18 years	10%	10 years	59%	330	0.9%	48	1.0	300%	17.9
Zaire	source strategic minerals	29.1	2.8%	25 years	30%	13 years	66%	210	1.6%	32	2.6	723%	13.4
Zambia	source strategic minerals	5.8	3.2%	22 years	39%	13 years	66%	480	0.2%	41	1.4	156%	51.6
Zimbabwe	strategic location	7.4	3.3%	21 years	20%	11 years	57%	480	0.1%	45	n/a	n/a	n/a
South Africa	source strategic minerals shipping lane choke point	28.4	2.8%	25 years	48%	21 years	55%	1,480	1.1%	60	3.7	429%	12.2

Key: Definitions for Strategic Importance Column

major petroleum exporter	major exporter, crude oil, 1980
source strategic mineral(s)	a major world exporter, which produced 5% or more of world output for at least one strategic non-fuel mineral, 1980
shipping lane choke point	a country borders on a key shipping lane for strategic materials which is vulnerable to blockade or cut off
strategic size and/or location	size and/or location of country is important to regional military balance, and/or East-West military balance, 1980

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[1] natural increase, exclusive of emigration and immigration

[2] per capita GNP, 1978

[3] The Physical Quality of Life Index, developed by the Overseas Development Council, Washington, D.C., is a non-income measure of the many aspects of human well-being. It combines three indicators—infant mortality, life expectancy at age one, and literacy—into a single composite index. On a scale of 0-100, 0 is the lowest level of well-being, and 100 is the highest.

Sources: Population Reference Bureau, Inc., World Population Data Sheet, 1980; United Nations, Dept. of International Economic and Social Affairs, Working Papers No. 66, 1980 and No. 44, 1979; World Bank, World Development Report, 1980; Overseas Development Council, The United States and World Development Agenda, 1980.

Table II - Urbanization Trends in Selected Principal Cities

Region/City	Annual Growth Rate (1970 - 1975)	Percent Annual Growth due to Immigration*	Population (millions)			Slums and Squatter Settlements as Percent of Population	Slums and Squatter Settlements Doubling Times
			1960	1980	2000		
Latin America							
Mexico City (Mexico)	5.6%	43%	5.12	15.04	31.04	46% (in 1970)	8 years
Rio de Janeiro (Brazil)	4.6%	39%	4.47	10.65	18.96	30% (in 1970)	13 years
Caracas (Venezuela)	4.6%	37%	1.33	3.27	5.71	40% (in 1974)	6 years
East Asia							
Seoul (Rep. of Korea)	5.0%	60%	2.36	8.45	13.68	30% (in 1970)	1.2 years
Manila (Philippines)	4.5%	27%	2.29	5.53	11.43	35% (in 1972)	13 years
Jakarta (Indonesia)	4.9%	47%	2.71	7.17	15.72	26% (in 1972)	15 years
West Asia/Middle East							
Greater Bombay (India)	3.5%	31%	4.15	8.36	16.78	45% (in 1971)	4 years
Baghdad (Iraq)	8.4%	60%	1.02	5.11	11.04	29% (in 1965)	n/a
Istanbul (Turkey)	6.8%	63%	1.45	5.17	10.80	40% (in 1970)	6 years
Greater Cairo (Egypt)	3.1%	16%	3.73	7.35	12.86	60% (in 1976)	n/a
Africa							
Nairobi (Kenya)	9.4%	65%	.24	1.33	5.27	33% (in 1970)	3 years
Lagos (Nigeria)	12.6%	79%	.12	1.24	4.99	n/a	n/a
Lusaka (Zambia)	11.6%	73%	n/a	.76	2.26	48% (in 1969)	1.5 years

*Calculated from difference between urban growth rate (1970-75) for principal city and 1975 rate of natural increase for country, divided by urban growth rate (1970-75) for principal city.

n/a = not available

Sources: United Nations, World Housing Survey, 1974; and Department of International Economic and Social Affairs Working Paper No. 66, 1980.

World Bank, Staff Working Paper #336, June 1979; and O. F. Grimes, Housing for Low-Income Urban Families, 1976.

IDRC, Housing Asia's Millions, 1979.

AID, Office of Housing, Immediate Action Proposals for Housing in Egypt, Statistical Appendix, 1976.

populations are very young, and these young people, in the volatile 15-25 age group, make up the bulk of urban migration. In most of the countries listed in Table I some two-thirds of the urban population are under age 25 (see column 8). Unemployment rates, moreover, among these urban youth are 30 percent or higher in most of the capital cities.

Another measure of growing frustration, shown in column 9 of Table I, is per capita income growth. In several Latin American and African countries (see for example Panama and Zimbabwe), per capita GNP is actually declining, and in a number of others (see for example Mexico and Pakistan) is barely holding its own. As a final point, I would call your attention to the last three columns on external debt. In a number of countries the increase in external debt between 1970 and 1978 was 700 or 800 percent, and accounted for as much as 70 to 80 percent of GNP in 1978.

Let me now call your attention to Table II which focuses more closely on the problem of burgeoning Third World cities. Mexico City had only 5 million people 20 years ago. Today it is one of the world's largest cities, with 15 million. In the next 20 years, at current growth rates, it is projected to top 30 million. Cities this size are off the scale of human experience. Perhaps more than half of Mexico City's present inhabitants live in squatter settlements which are estimated to double in size every eight years, twice as fast as the city as a whole. In Cairo, to take another example, squatter settlements are estimated at 60 percent of the city. More than 80 percent of Cairo's growth is, moreover, attributable to high urban birthrates rather than to immigration.

Population pressures such as these are rarely the immediate visible cause of political upheavals, but they are, with increasing frequency, an important conditioning factor. Until recently these relationships have received very little attention. But the events of the last several years suggest that we ignore them at our own peril. Where populations are doubling every 20 to 30 years and capital cities every 10 to 15 years, governments are hard pressed to maintain current standards of living, much less meet popular demands for more and better food, jobs, housing, schools and hospitals. The inevitable clash between rising expectations and diminishing hopes undermines public confidence in free market economic institutions and democratic political institutions. As resentment and frustrations grow, new opportunities are created for extremist forces of both the right and the left. In Iran, for example, competent observers, such as former Under Secretary of State George Ball, cite conditions in Tehran's overcrowded slums as an important contributor to the 1978-79 upheavals. In El Salvador, a 1967 cable from the U.S. ambassador predicted the present civil disorder based on El Salvador's failure to curb population pressures. The same pressures have been implicated in the 1969 Soccer War between El Salvador and Honduras.

In summary, continued high rates of population growth place unreasonable demands on the already shaky economic and political structures of most developing countries. If economic conditions worsen worldwide, many of these countries will move even closer to the brink of bankruptcy and political collapse. Population control will not ensure prosperity and stability and will certainly not do so in the short run. But uncontrolled population growth will certainly ensure that, increasingly over the next 20 years, many of those countries where vital U.S. security interests are at stake will find it impossible to meet the legitimate development goals of their people. And, against a background of popular frustration, urban squallor and unemployment, they will also find it impossible to defend themselves against internal upheaval and external threats to their independence except by excessive dependence on military force and repression. Nothing could be more in our interests and theirs than programs designed to lessen population pressures. These programs deserve to receive all the resources they can effectively spend.

II. Funding Shortfalls for International Population Assistance

Over the last decade the United States, largely as a result of Congressional initiative, has taken the leadership in building global awareness of the population crisis and in convincing developing country governments to launch family planning programs. In the late 1960's and early 1970's we were virtually alone in this effort. Today, however, nearly all donor countries contribute to international population assistance and over 35 developing countries, representing nearly 80 percent of the Third World population, have explicit policies to reduce population growth. Some of these developing countries are now providing from their own resources up to two-thirds of the funding required to support national programs. The United States remains the largest population donor, accounting for about 40 percent of total donor assistance of about $450 million annually. Japan, West Germany

Table III - Basis for Calculating Annual Global Funding Requirements to Achieve Replacement Level Fertility

Target Population:

Number of women aged 15-45 in 1980 = 1,100 million
minus those in developed countries and China = 534 million
minus those unmarried or sexually inactive = 384 million
minus the proportion considered infertile = 345 million
minus those pregnant or lactating = 310 million
Increases of 50 percent by 1990[2] = 465 million
Increases of 100 percent by 2000[2] = 620 million

Minimum Per Capita Costs[1]:

community-based contraceptives alone	$ 6
with clinic services, physician referrals	$10
with other population program components	$15

$15 times 310 = $4.65 billion in 1980
$15 times 465 = $6.97 billion[3] in 1990
$15 times 620 = $9.30 billion[3] in 2000

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[1] Family planning expenditures in China are not known, necessitating China's exclusion from cost calculations

[2] Assuming replacement level fertility

[3] In constant dollars

and several other European donors have increased their contributions by 30 to 60 percent over the last few years. Developing country contributions, exclusive of China, amount to an estimated $750 million, bringing resources up to about $1.2 billion annually. There are no cost figures presently available for The Peole's Republic of China, but one must assume that, given the strength of China's population effort, government expenditures exceed $500 million annually. China's recent bid for external assistance has, moreover, placed considerable strain on multilateral channels of assistance.

A. A Realistic Global Budget for Population Programs

Although family planning services are relatively inexpensive compared to many other development efforts, the global population budget of $1.2 billion represents no more than 25 percent of what would be required annually over the next decade to assure universal availability of family planning services.

My estimates of global requirements are based on calculations summarized in Table III on page 6a. In 1980 there were approximately 1.1 billion women in the world in the reproductive age group 15 to 45 years. Excluding those in developed countries and China, about 534 million lived in the developing countries. Of these about 384 million were married or otherwise living in union. Subtracting from this number the 10 percent who are probably unable to conceive leaves a target population of 345 million women or couples. If each of these couples had an average of 2.5 children--the number representing replacement level fertility at current death rates--about 10 percent of the women would at any one time be pregnant or breastfeeding, further reducing the "population at risk" to about 310 million, or roughly 80 percent of all developing country women (outside China) of reproductive age. In developed countries which have already achieved replacement-level fertility, contraceptive prevalence levels are, in fact, now between 75 and 85 percent of women of reproductive age. In the developing countries outside China, however, less than 20 percent of women of reproductive age are presently using any effective form of contraception.

The cost of providing these women with adequate family planning services varies greatly from country to country, depending on the mix of methods offered, the type of delivery system, the socio-economic setting and the number of people served by the program. These factors determine the degree to which some clients can pay for services, the level of investment required in basic physical and human infrastructures compared to the number of initial family planning acceptors, the amount of recurrent costs for contraceptive supplies, and the degree of effort required to recruit and maintain clients.

If, however, one simply divides total known resources for developing country population programs by the number of family planning clients ($1.2 billion divided by about 78 million clients) current expenditures amount to about $15 per capita, a third or more of which probably goes to fund the collection of demographic data, policy studies, biomedical research and other components of comprehensive population policies. An examination of individual family planning programs suggests that the costs of providing direct family planning services ranges from $5 to $50 per client per year. A low per capita cost for a well established family planning program operating in a favorable setting with heavy reliance on sterilization and community-based distribution of contraceptives by health auxiliaries and sliding payment scales for clients would probably be about $10 to $12 annually.

Let us therefore assume for the purposes of discussion that $15 per capita annually represents a minimally adequate figure to fund family planning services and some auxiliary population programs and that the number of women to be reached outside China is 310 million. The ideal global budget for population programs in 1982 would then be about $4.65 billion annually with another $600 million to be added for China, part of it in external assistance. This figure, of course, increases each year as additional women enter their reproductive years. Thus by 1990, the target population will have increased by about 50 percent requiring a population budget in constant dollars of almost $7 billion and of almost $10 billion by the end of the century, when funding requirements might begin to level off.

To reach the $7 billion figure by the end of this decade is by no means impossible. If the developing country share of funding were to rise from the present 60 percent to 70 percent, for example, $2.8 billion would be needed from donor countries. If the U.S. share of donor assistance were to decline from the present 40 percent to 30 percent our contribution would have to rise from $190 million in 1981 to $840 million in 1990 (in constant dollars).

It is important to note that presently only about two percent of development assistance from all donors is allocated to population programs. For total U.S. development aid, the proportion is about five percent. Over the last three years, moreover, U.S. population assistance has increased by only two percent. The current funding level of $190 million represents substantially less in constant dollars than the $121 million appropriated in 1972, the first year population became a line item in AID functional accounts.

For FY1982 the Carter Administration's AID budget, reflecting a serious attempt to finally prioritize various development assistance programs, contained $346 million for population. Budget revisions by the Reagan Administration will probably reduce this figure to $250 million. Those close to AID's population program believe, however, that $450 million could be effectively spent in FY1982 and increases of 20 to 30 percent a year for the next several years would not unduly strain the absorptive capacity of most of AID's principal intermediaries and country programs. Past experience also suggests that a new U.S. leadership initiative in population assistance would spur both developing countries and other donors to increase their own contributions to population efforts, permitting a decline in the U.S. share of total resources required several years later. The following indicative budget figures represent this kind of multi-year U.S. leadership initiative leading to a contribution in constant dollars of $840 million by 1990:

FY 1982	$350 million
FY 1983	$435 million
FY 1984	$550 million
FY 1985	$660 million

FY 1990	$840 million

B. Specific Funding Shortfalls

I realize that in the current climate of budgetary restrictions, these multi-year funding proposals may seem somewhat out of touch with reality. It is painfully clear, however, that substantial amounts of additional funds are needed immediately. While funds for population assistance from the United States have increased only two percent over the last several years, in the same period requests from developing countries have virtually exploded. The result is that in FY1981, total available population assistance will fall short of project requests by between $150 to $200 million. This estimate is based on: specific shortfalls for U.S. bilateral country programs of at least $45 million; unfunded projects at UNFPA of about $125 million (of which the U.S. share is one-fourth to one-third); shortfalls among AID's PVO intermediaries in the family planning services area of nearly $30 million; training program shortfalls of over $8 million; unmet commodity requirements

POPULATION ASSISTANCE FY1972-1981
IN ACTUAL AND CONSTANT (1972) DOLLARS

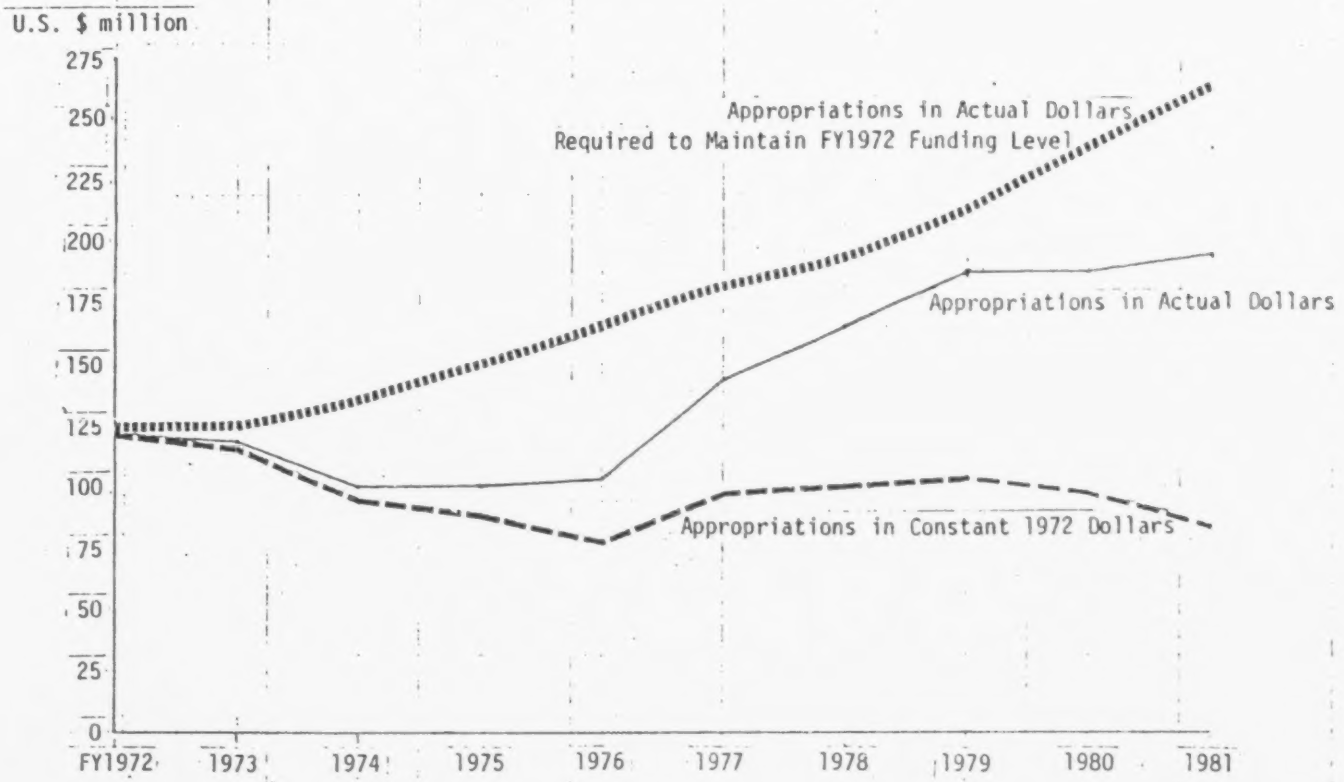

Table IV - Indicative Shortfalls in Population Funding-1981 (in millions)

	1981 Resources	1982 Program Needs
A. Multilateral		
1. United Nations Fund for Population Activities (U.S. share 25-30 percent)	$152*	$270 to 280
2. International Planned Parenthood Federation (U.S. share 30-35 percent)	50	65 to 70
B. AID Intermediaries and Centrally Funded Programs		
1. Family Planning International Assistance	13.0	20 to 21
2. Association for Voluntary Sterilization - International Project	9.4	
3. Pathfinder Fund	6.65	9 to 10
4. Contraceptive Retail Sales	2.45	9 to 10
5. Operations Research	6.1	12 to 18
6. Biomedical Research	4.6	9 to 10
7. Training	12.5	16 to 18
C. Geographic Bureau Country Programs	74.0	120 to 130

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* Estimate, includes $20 million in allocated funds carried over from 1980.

of $7.5 million; and operations research and other policy and program development shortfalls of $12 to $20 million. These are summarized on Table IV (see page 9b). The specifics of these shortfalls in the various programs are illustrative of current trends in the population field.

1. United Nations Fund for Population Activities (UNFPA)

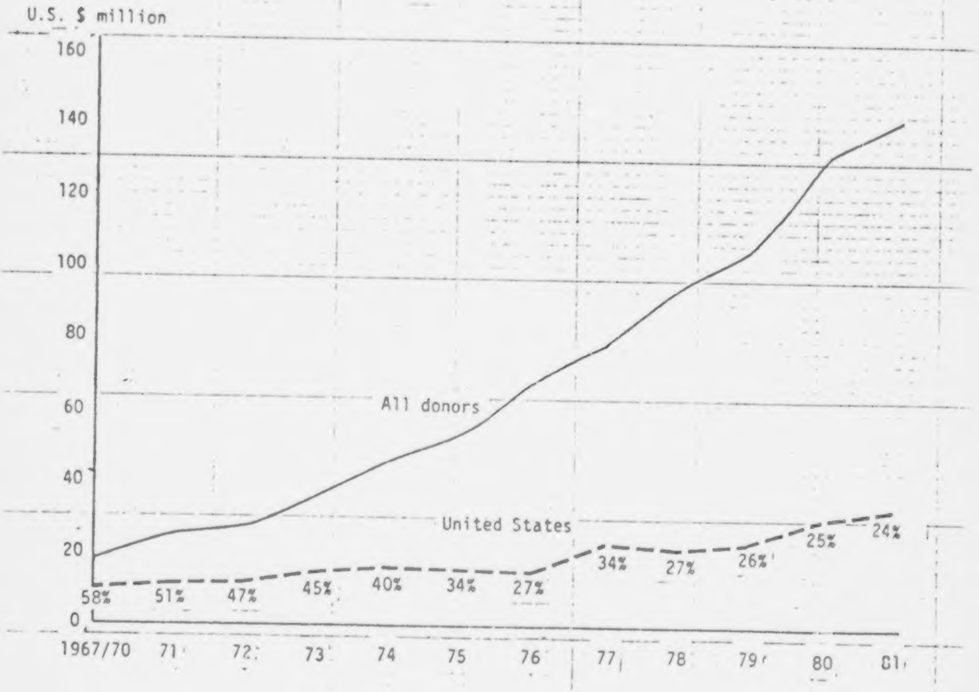
The UNFPA was set in motion from 1967-70 with a series of challenge grants from the United States reaching $7.7 million in 1970. Until 1972, the average U.S. share of total contributions to UNFPA remained over 50 percent. Today, it is about 25 percent and will drop well below that level in 1981 if the proposed U.S. contribution of $32 million is not increased. For FY1981, over 90 governments pledged contributions to the UNFPA amounting to $130 million. Between 1978 and 1980 other major donors, such as West Germany and Japan, increased the level of their contributions by as much as 65 percent. The U.S. increase over the same period was only 14 percent.

The poor showing by the U.S. contributed to shortfalls in total contributions (below approval authority from the Governing Council), causing UNFPA to dip into reserves carried over from prior years. These reserves were totally depleted in 1980. Meanwhile a burst of new project requests, including very large multi-year requests from India ($100 million) and China ($50 million) have pushed UNFPA's need for new resources to over $276 million for 1981. In early 1981, UNFPA had already approved projects with budgets totalling $186 million. Additional projects (many multi-year) ready for approval in 1981 by the UNFPA Governing Council had budgets totalling $80 million. In the present UNFPA pipeline are projects in countries where a strong U.S. interest in population planning exists: India, Indonesia, the Philippines, Thailand, Colombia, Jordan, Sudan, Syria, Turkey, Mexico, and several in Central America and the Carribbean.

The UNFPA is a highly effective mechanism for promoting U.S. population interests for the following reasons:

- The UNFPA can and does implement population programs in 85 countries where no bilateral U.S. program exists. In some cases direct U.S. population assistance would be politically impossible. By contributing to the UNFPA, the U.S. can promote programs important to U.S. security interests without being obvious. UNFPA can also play an

CONTRIBUTIONS TO THE UNFPA
BY THE UNITED STATES AND BY ALL DONORS
(Actual and Estimated)



initial pump-priming role for bilateral programs, as it did, for example, in Mexico.

- UNFPA has been particularly effective at implementing projects in high priority regions where AID's geographic regions have experienced considerable difficulties. For example, UNFPA has expanded programs in sub-Saharan Africa from $8.6 million in 1976 to $16.6 million in 1979 and $20 million in 1980. Another $24.6 million has already been approved for FY1981, with another $25.3 million awaiting the availability of funds. However, at this juncture, resources are inadequate even for approved projects.
- UNFPA has the administrative capacity to develop and supervise an increasing number of large country programs and to do so cost-effectively and quickly. Between 1977-78 and 1978-79, with adequate resources, new approvals and expenditures grew by 33 percent a year. At the same time UNFPA's administrative costs never exceeded 8 percent a year. UNFPA has actually delivered on 84 percent of its approved projects each year for the last four years. The work of UNFPA high-level Needs Assessment Teams (in 60 countries) has greatly improved the quality of long-range coordinated programming.
- UNFPA has made the involvement of women in policy and program implementation a reality, with the highest percentage of female professionals of any U.N. organization, currently 35 percent. UNFPA was the first major agency to develop guidelines on women-in-development projects and has gone further than others in actually implementing them.
- U.S. contributions to UNFPA have a strong multiplier effect. Increases of 20 percent in the U.S. contribution can and have produced increases of 40 percent or more in contributions from other major donors.

In FY1982 the U.S. should provide a base grant of at least $50 million to the UNFPA plus a challenge grant of $15 to $20 million, committing the U.S. to match major increases (say of 10 percent or more) in contributions from other principal donors or from Arab OPEC countries. This is, in fact, the way the UNFPA was launched a decade ago, with just such a challenge grant from the United

States. The same kind of U.S. leadership is needed again this year to bring total contributions closer in line with the tremendous new demands on UNFPA resources.

2. International Planned Parenthood Federation

IPPF's nearly $50 million budget and network of 95 national Family Planning Associations (FPAs) make it one of the largest private voluntary organizations working in any aspect of development assistance.

The role of U.S. leadership in the development of the IPPF parallels that of the UNFPA. Through the early 1970's, U.S. contributions, including commodities, accounted for an average of 50 percent of IPPF's resources. By 1979, that proportion had dropped to 28 percent. If proposed U.S. contributions of about $12 million in cash and $1 million in commodities for FY1981 are not increased, the U.S. will not measurably increase its contribution to IPPF for the fourth year running. Between 1978 and 1980, however, IPPF's total revenues increased by nearly 20 percent, with increases from other major donors amounting to 25 to 50 percent over the two-year period.

As in the UNFPA, flagging U.S. commitments have contributed to serious shortfalls in revenues, forcing IPPF to dip into its working capital (needed to maintain fiscal viability in light of the erratic timing of government contributions). In 1980 and 1981, despite warnings to its national Family Planning Associations throughout the developing world that they should submit only "bare-bones" budgets, and despite cuts to these budgets at the regional level totaling 25 percent, IPPF still faces massive shortfalls requiring further cuts to balance the budget. To fully fund its national affiliates' original bare-bones budgets would require an additional $12-15 million; to make up for prior years the U.S. should increase its contribution by at least $6 million in FY1982.

Some of IPPF's 95 national affiliates, particularly in Africa and Latin America, remain the largest (and in a few cases the only) source of contraceptive information and services. These are countries where no bilateral program exists and where multilateral donors (requiring governmental approval for projects) must confine their present support to demographic data collection, policy development and other politically safe activities. For some affiliates, programs have had to be cut now for several years, resulting in the denial of family planning services to a continually growing number of eligible couples and dampening the traditional pressures that the affiliates, as national advocacy groups, have put on governments to become more involved. The financial status of affiliates in the whole Africa region and in India, Pakistan and several Latin American countries is especially tenuous. It is worth noting that IPPF pioneered the community-based distribution approach to the delivery of family planning services, making these services available to couples outside the reach of institutional health and social services.

Given an essentially straight-lined U.S. contribution over several years the inroads of inflation plus dollar depreciation have presented IPPF with financial problems that are almost impossible to resolve. Recognizing this, AID was moved at the end of FY1979 to provide IPPF with $6 million in forward funding toward the U.S. 1980 pledge of $12 million plus $1 million in commodities. Unfortunately, this forward funding had to be subtracted from the 1980 pledge and served only to forestall major shortfalls for a few months.

3. Family Planning International Assistance (FPIA)

Established in 1971 as the International Division of Planned Parenthood Federation of America, FPIA provides financial, commodity and technical assistance to community-level organizations, especially church groups, in developing countries interested in initiating or expanding family planning programs. FPIA has shipped commodities to more than 2,000 institutions in some 100 countries. Emphasis is on innovative demonstration projects for the delivery of family planning services, increased involvement of women's and youth group organizations, and family planning programs with income-generating components. AID is the principal source of support with additional contributions from Church World Service and individual donors. FPIA's 1979 budget of $11 million supported more than 60 projects in 24 countries. For FY1981, the FPIA could quickly allocate to good projects $20 million, the level proposed in both the FY1981 and FY1982 Carter Administration requests. Some additional money ought to be available to respond to requests from large countries, like Brazil or India, which may become eligible for and interested in AID intermediary programs in FY1981. This is true of the service-oriented inter-mediaries as a whole.

4. Association for Voluntary Sterilization--International Project (IPAVS)

The Association for Voluntary Sterilization was incorporated in 1943 to promote male and female voluntary sterilization on a national and worldwide basis as an effective means of contraception. The International Project was organized in 1972 with funds from AID to encourage and assist voluntary sterilization programs throughout the world. With a 1979 budget of about $7 million, IPAVS supported more than 300 projects in 80 countries. Funding priorities include: the provision of services and equipment, educational programs, training of professional and health-support staff, and local and national conferences. Today voluntary sterilization is the most rapidly growing method of contraception in developing countries. This may be because most LDC women have all the children they want by age 25 or 30, yet they face another 20 years of reproductive life. In countries like Egypt and Indonesia, a major government program in voluntary sterilization is still considered politically risky, but these governments do give quiet encouragement to IPAVS to lay the groundwork with private sector programs. IPAVS is set up to allocate all of the $14 million in the original FY1981 budget request. More could probably be programmed in 1982.

5. The Pathfinder Fund

The Pathfinder Fund is a public foundation established in 1957 by Dr. Clarence Gamble to continue his work of helping groups and individuals around the world initiate local family planning activities. Pathfinder focuses its resources and efforts on the development of programs for population and family planning within three main categories: fertility services, women's programs, and population policy. The Pathfinder Fund has one of the longest and best track records for innovative programs of any PVO in the development community. In 1980, the Pathfinder Fund made roughly 250 grants to individuals, organizations and governments in more than 50 developing countries. For FY1981 Pathfinder needs $3 million more than it is receiving from AID to fund projects already approved. By FY1982 it will need between $5 and $6 million above current grant levels.

6. Contraceptive Retail Sales--Multiple Contractors

Social marketing is considered by many to be the most cost-effective way to expand contraceptive availability quickly. In some countries where bulky government health bureaucracies have been unable to implement any effective family planning programs, social marketing systems are the principal source of contraceptive supplies. The original FY1981 AID request called for $11.2 million for contraceptive retail sales programs. Major shortfalls forced AID to curtail program expansion in Bangladesh, Nepal and Mexico and to defer project development in Brazil, Honduras and Indonesia. Another $6 to $7 million is urgently needed, and more could probably be well spent. Two of the major contractors are Population Services International and Westinghouse Health Systems.

Population Services International designs and implements subsidized contraceptive distribution programs using modern business techniques such as market analysis, field-tested packaging, extensive advertising and direct mail solicitation. Major projects are underway in Bangladesh and Mexico, and other projects have been conducted in Kenya, Sri Lanka and Colombia. In the early 1970's, Westinghouse Health Systems conducted the first feasibility studies of commercial contraceptive marketing in eight developing countries. Subsequently Health Systems has managed contraceptive marketing programs in Jamaica, Ghana and Nepal in which AID contraceptives were advertised and sold at subsidized prices through retail outlets. The Jamaican program is the first of its kind to be turned over to the host government. (Health Systems is also currently conducting 60 contraceptive prevalence surveys in over 30 developing countries to assist national family planning programs in more effective management through refined data collection systems. The prevalence surveys show, among other things, the substantial impact social marketing has had on contraceptive use in most countries where it is well established.)

7. Operations Research

In FY1981 AID funded about $6 million in operations research projects (down from $7 million in FY80) designed to improve the quality and cost-effectiveness of family planning programs. Some of these projects, like those in Egypt, Bangladesh and Morocco were in a sense pilot projects which successfully demonstrated to local policymakers the impact which community-based distribution could make on contraceptive prevalence. In FY1982, AID ought to spend another $12 to $18 million on operations research. The higher figure would require additional staff in the Population Office research branch, since much of this work is done in-house or under cooperative working arrangements with institutions in the U.S. and overseas. The principal U.S. contractors are, in rough order of magnitude: Columbia, Johns Hopkins and Tulane Universities, the International Fertility Research Program (IFRP), and the East-West Center at the University of Hawaii. A major part of the research is also done by developing country universities, government agencies and private voluntary organizations involved directly in family planning services.

8. Biomedical Research

It is impossible to overemphasize the contribution which U.S. contraceptive research has made and can make in the future to global population problems. Because U.S. science is so far ahead in this regard, it is almost inevitable that most major new breakthroughs will come from American research institutions and pharmaceutical companies. There is much more that can be done to encourage such research and development, but most of it is probably outside AID's sphere.

AID's role is threefold. First, because AID is in the contraceptive commodity business in a big way, it has a responsibility to continually evaluate the long-term efficacy and safety of contraceptive products under LDC conditions. This epidemiological work is badly underfunded.

Second, because NIH-funded projects and pharmaceutical industry efforts are necessarily geared to U.S. needs, the responsibility for LDC-oriented research and development falls largely to AID and its contractors. For example, a post-partum IUD (developed by the AID-funded IFRP) has immense importance for LDC programs which rely heavily on post-partum family planning services, but it has little application in the U.S.

Third, AID has a responsibility for institution-building overseas to improve developing country capacity for local testing and evaluation of contraceptive methods. Because risk-benefit ratios differ so dramatically between developed and developing countries and because many governments will make such sensitive decisions only on the basis of locally generated data, local capabilities must be upgraded.

AID had been spending between $6 and $7 million annually on these three types of work, but funding shortfalls have reduced the FY1981 figure to $4.6 million. Another $3 million is needed in FY1982, in part to follow up several important new methods. These include new barrier methods (e.g. vaginal sponges and new foaming tablets) which could be sold through retail networks, the vaginal ring which releases contraceptive steroids over a long period of time, and the exciting new LHRH compounds applicable to both men and women. The principal AID contractors in order of magnitude are IFRP, PARFR (Program for Applied Research in Fertility Regulation), Johns Hopkins University and the Population Council.

9. Training

The lack of trained medical and managerial personnel is a bottleneck to the spread of family planning services in developing countries. Three important AID training programs are badly underfunded.

The Johns Hopkins Program for International Education in Gynecology and Obstetrics (JHPIEGO) is the principal source of training in family planning for physicians and other health professionals from developing countries. It also provides basic OB/GYN equipment to those trained. In addition to the short courses in Baltimore, JHPIEGO also conducts sessions at training centers in Africa, Asia and Latin America. Training programs in a number of additional countries have been requested but cannot be funded. An additional $4 million is needed.

AID has several contracts with U.S. institutions to provide family planning training to paramedics, auxiliaries and other health workers. These contracts have had to be cut and need another $4.1 million above current levels of funding.

AID has also funded a small training program for family planning managers at the Centre for Population Activities (CEFPA). Over the last several years CEFPA has developed a unique and highly successful "Women-in-Management" program which trains several groups of 30-40 women a year. CEFPA's present contract has run out and no new RFP has been issued. I view this as an unmitigated disaster, given the importance of involving more women in family planning program design and management.

III. Cost-effectiveness of Various Policy Options for Reducing Fertility

In addition to the large backlog of unfunded projects, many in well established population programs, there is at least one additional reason to assume that a major increase in population funds would produce tangible results in terms of world birthrates. I refer to the fact that we now have a much clearer understanding than we did a decade ago of the way family planning programs need to be structured in order to succeed as well as strong indications as to how other development efforts affect family planning acceptance. In this last section of my testimony, I would like to summarize this "new conventional wisdom" with respect to the cost-effectiveness of various policy options for reducing fertility. Some government options--specifically contraceptive services and efforts to improve the status of women--are clearly indicated; others are not. For convenience I have divided these policy options into two groups: direct interventions dealing with proximate fertility variables and indirect interventions dealing with secondary fertility variables.

A. Proximate Fertility Variables--Direct Interventions

Over the long run there are a large number of things which probably influence attitudes about childbearing. But there is only one thing which in the literal sense causes high fertility and that is unprotected intercourse widely practiced. Leaving aside abortion, there are thus only two types of direct fertility interventions: those which reduce sexual exposure--such as a rise in the age of marriage--and those which provide protection against pregnancy. Table V describes hypothetical combinations of proximate variables needed to reach birthrates approaching replacement-level fertility.

1. Contraceptive Information and Services

Governments can do a great deal to directly affect contraceptive prevalence by providing subsidized family planning services and by creating a political climate that promotes contraceptive use and smaller families as social and individual advantages. One of the most important lessons learned from a decade of AID experience is that poor, largely illiterate rural women will practice contraception just as readily as educated urban women, if services are easily available at the village level from people they know and trust and if community leadership is committed to the program.

The key point is this: where well organized community-based family planning services exist and have public support, social and economic determinants of fertility such as education, income, urban residence, and child survival rates have much less significance. Where such services do not exist, these secondary variables correlate strongly with fertility behavior. Where good family planning services and favorable socio-economic conditions both exist, the effect seems to be synergistic. The ability of governments to implement an effective family planning program is, of course, affected by overall levels of development, but the more important factor is probably political will.

On the programmatic side, it is important to recognize that considerable unmet demand for contraceptive services already exists and has been documented in many developing countries. Of those women interviewed by the World Fertility

Table V - Hypothetical Combinations of Factors Needed to Reach an Average Family Size of 2.5[1]

Alternative Combinations	Months of Breast-feeding	Percentage of Women in Union Using Contraception	Number of Abortions per Woman per Lifetime	Percentage of Reproductive Years Spent Sexually Active
Option 1: long lactation, low contraceptive prevalence, heavy reliance on abortion, very late marriage	24	18	3	60
Option 2: moderate levels of lactation, contraceptive prevalence and abortion, late marriage	12	54	1.5	70
Option 3: moderate lactation, high contraceptive prevalence, low incidence of abortion, and late marriage	12	62	0.5	70
Option 4 little lactation, very high contraceptive prevalence, low incidence of abortion, and moderate age of marriage	3	74	0.5	80

[1] An average family size of 2.5 is roughly equivalent to a birth rate of 20 births per 1,000 people.

Source: Adapted from Bernard Berelson, "Prospects and Programs for Fertility Reduction: What? Where?", Population and Development Review, IV, 4, December 1978, p. 603.

Survey, about one-third said their last birth was unwanted and half said they wanted no more children. About half of this latter group were not using any effective form of contraception. Rising rates of abortion are also a sign of unmet needs. Finally, there is increasing evidence that contraceptive prevalence involves a snowballing effect. A core of satisfied users in a community helps generate additional demand.

2. Encouraging Breastfeeding

It should be noted that breastfeeding acts as a natural contraceptive by suppressing ovulation. Over the last 20 years breastfeeding has probably prevented more pregnancies on the aggregate level than all forms of modern contraception combined. However, it is unreliable on the individual level as a contraceptive, especially if infants are not allowed to nurse on demand. Breastfeeding is likely to decline as a factor in fertility due to modifications in the way it is practiced and an overall decline in its use in developing countries. As a measure for direct government intervention, it is probably not a major population policy option.

3. Raising the Age of Marriage

Governments can probably do little directly to reduce sexual exposure. The most common policy intervention is to raise the age of marriage, but this takes more than government edicts. It requires substantial efforts in female education and employment, and other measures to improve the status of women. It may also benefit (as in Sri Lanka) from high male unemployment, emigration or housing shortages, which delay family formation. A rising age of marriage has powerful impacts on fertility by reducing completed family size, lengthening the interval between generations and (note the circularity) improving women's status. But this is not easily manipulated by direct government intervention.

4. Incentive Schemes

A few governments have tried to modify pronatalist attitudes and behavior directly through the provision of individual and community incentives and discentives. These have proved effective in mainland China and Singapore where a full range of family planning services is available and where general socio-economic conditions favor small families. Incentives have been disappointing in India and other countries where the same set of conditions do not exist. Experts disagree over the utility of incentives, but it is my own opinion that community incentives are preferable

Table VI - Estimated Costs to Avert One Birth in a Low-income Developing Country

Single Intervention	Basis of Calculations	Cost
Family Planning Field Worker Visits	($2 per visit times 11 visits to avert one birth)	$ 22
Female Education	($10 per woman year of education times 8 years to avert 0.5 births per woman educated)	$ 160
Reduction in Infant Mortality	($20 per family for nutritional program to prevent one infant death out of 450 live births and to thus avert one additional birth)	$ 800
Rise in Per Capita Incomes for Poor	($4.38 million to increase incomes one percent of poorest 40% of population; 1,440 births averted)	$3,042

Note: No allowance has been made for the possible synergistic effects of a combination of direct and indirect interventions. In actuality, the costs of the three non-family planning programs might be higher because the cost of a method of direct birth prevention has not been included.

Source: Adapted from George B. Simmons, "Family Planning Programs or Development: How Persuasive Is the New Wisdom?", International Family Planning Perspectives, Vol. 5, No. 3, Sept. 1979, p. 107.

to individual ones, from both a practical and political viewpoint. However, there is a thin line between development programs which reduce parents' felt needs for high fertility and incentive-disincentive schemes which are clearly anti-natalist. U.S. policy should probably not step over this line.

B. Secondary Fertility Variables--Indirect Interventions

Of the long list of social and economic factors thought to have some impact on fertility I believe there are five which deserve special attention. They are:

- female education
- female employment outside the home
- higher infant and child survival rates
- improved rural infrastructures
- general improvements in the quality of life and in economic opportunities for the poorest sectors.

All of these factors have been associated with fertility declines, but the strength of the association varies from one country to another (sometimes from one social grouping to another within a country) and precise cause and effect is difficult to demonstrate. In many cases these appear to be threshold (not linear) variables. For example, certain minimum levels of female education appear to be necessary to affect fertility, but much beyond this threshold, the effect declines. In some cases the causal relationship may be two-way, as with high infant mortality and high fertility. While none of these secondary variables constitutes a necessary or sufficient condition for fertility declines, they surely create, over the long-run, conditions more conducive to family planning acceptance. In the allocation of scarce population program resources, however, the major criteria must be cost- and time-effectiveness. By these criteria, none of the indirect interventions appear to represent good population policy alternatives to family planning, although they are highly justified in terms of other development goals and (partly because of their possible long-term impact on fertility) should be actively pursued with other development resources. The illustrative cost figures in Table VI for various interventions are open to argument and probably vary greatly from country to country, but the magnitudes would appear to be about right. They clearly underscore the cost-effectiveness of family planning.

Another way of looking at this cost- and time-effectiveness issue is presented in Table VII, which indicates in column 3 the education, income and other threshold

Table VII - Threshold Values for Socio-economic Factors Needed to Attain Lower Fertility Independent of Organized Family Planning Programs

Factor	Threshold Value for Average Family Size of 4.9[1]	Threshold Value for Average Family Size of 2.5[2]	Estimated Average Values Attained by Developing Countries[4]	Estimated Average Values Attained by Developed Countries[4]
Adult literacy	70%	93%	42%	98%
School enrollment for youth aged 5-19	55%	69%	50%	89%
Life expectancy	60 years	69 years	58 years	72 years
Infant mortality rate[3]	65	32	109	20
Proportion of labor force in non-agricultural work	55%	80%	33%	82%
Per capita GNP (Gross National Product)	$450	$1,080	$560	$6,260
Proportion women marrying at age 20 or later	80%	90%	61%	92%

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[1] Indicates children per woman; roughly equivalent to a birth rate of 35 births per 1,000 people.

[2] Indicates children per woman; roughly equivalent to a birth rate of 20 births per 1,000 people.

[3] Indicates number of deaths to infants under one year of age per 1,000 births.

[4] Data are for most recent year available.

Sources: Threshold values are from Bernard Berelson, "Prospects and Programs for Fertility Reduction: What? Where?", Population and Development Review, IV, 4, Dec. 1978, p. 582; estimated values from developing and developed countries are from various United Nations data sources.

levels required for low fertility, independent of strong, organized family planning efforts. To achieve a birthrate of 20 births per 1,000 people or an average family size of 2.5 children (compared with current developing country rates of 30 to 50 per thousand) would require a threshold level for literacy of 93 percent, for example. Obviously, most developing countries simply do not have the luxury of waiting for these thresholds to be reached. They must bring birthrates down now.

The choice for policymakers is not, of course, between family planning and other development programs. Both need to be pursued simultaneously and will over time be mutually supportive. The choice is rather between different development policies with differing potential impact on fertility. It may therefore be useful to summarize what is known about some of those socio-economic factors assumed to have the greatest impact and their relative feasibility. I have chosen four for the purpose of illustration.

I. Expanding Female Education

In general, women tend to want smaller families than their husbands and tend to be more highly motivated to use contraception. It is therefore important to allow women in developing countries to take charge of their reproductive lives by reducing the social pressures on them to have many children as a source of status within their family or community. Governments can work to improve women's status in a number of ways, including: the revision of laws pertaining to the family, property, divorce rights; equal employment opportunities; access to credit; and the improvement of health and social service programs that directly benefit women.

But the single most important area of government intervention in terms of its influence on fertility is female education. Increased levels of education for both women and men are associated with reduced fertility, but women's education appears to have a much stronger influence on fertility than men's education. Women who have completed at least primary school almost universally have fewer children than women with no education. However, some threshold of education seems to be important. In some Asian and African countries, women with only a few years of schooling have more children than women with no education. Apparently, a little education can weaken traditional restraints on fertility such as prolonged breastfeeding, polygamy and post-partum abstinence without encouraging sufficient contraceptive use to offset these changes.

Education is thought to influence fertility by causing young women to postpone marriage, enabling them to obtain gainful employment and higher cash incomes--both associated with lower fertility--exposing them to "modern" ideas and information, and facilitating better husband-wife communication. Education may also contribute to better health and nutrition of children already born, reducing any impulse to counter high infant mortality with high fertility.

Despite the strong overall link between female education and fertility, education by itself is neither a necessary nor a sufficient condition to bring about a reduction in fertility. In Indonesia, for example, illiterate peasant couples have the same level of contraceptive practice and fertility as couples from other strata of society because Indonesia's strong family planning program reaches into nearly all villages and receives widespread community support. It appears that education levels make the greatest difference in contraceptive practice where organized family planning programs are weakest, perhaps because education gives women an edge in access to scarce or expensive contraceptive services.

2. Expanding Female Employment

The participation of women in the wage labor force is closely associated with lower fertility in many countries. In Mexico, for example, women with no paid work experience following marriage are expected to bear 7.2 children after 25 years of marriage, compared with 5.3 children among those who have worked even briefly in the modern sector. In general, the husband's work status appears to have little influence on his wife's fertility.

Less clear are the possible effects on fertility of female employment in the informal and agricultural sectors, where women are frequently unpaid family laborers. One key seems to be the degree to which women independently control land and other productive resources. Another is the degree to which child care competes or is compatible with other work. For the most part, work in subsistence agriculture and traditional female crafts is compatible with full-time child care; work in the wage labor force is not. Finally, the financial implications of the woman's staying at home to care for an additional child may carry greater weight in poorer households where the husband's income is insufficient to meet family needs.

From the perspective of public policy, whether additional employment opportunities for women can be created is uncertain, given the extent of male unemployment and under-employment in the Third World already. By the year 2000, there will be a billion new jobseekers--a legacy of past rapid population growth. This growth in the labor force will make it difficult to create additional jobs for women in the modern sector on a massive scale without exceptional levels of government commitment.

3. Reducing Infant Mortality

For years, one of the most widely held assumptions has been that a reduction in infant mortality is a prerequisite to declines in fertility. Parents are thought to have more children than they want in order to ensure that some, especially a son, will survive to care for them in old age. There is indeed a strong statistical relationship between high fertility and high infant mortality. However, new studies have brought into question the assumed cause and effect relationship and some even suggest that the relationship is reversed--that high infant mortality is a behavioral as well as a biological consequence of high fertility.

There are several reasons to assume that the causal relationship between infant mortality and fertility is at least two-way. First of all, high birth rates are a major contributor to high infant death rates, since maternal age, number of prior pregnancies and the interval between births are all key factors in infant mortality rates. It also appears that some parents intentionally make less of an investment in unwanted children-- by providing less food, health care or emotional support--and that these children have poorer rates of survival. In countries where boys are favored over girls, these practices may explain why female child mortality is significantly higher. In extreme cases, parents may react to unwanted children by abandoning them, a phenomenon which appears to be common in some areas of the developing world.

Many population experts now believe that reducing infant and child mortality, while eminently justifiable on humanitarian grounds, is unlikely to have a major depressive impact on birthrates and family size in the short term. What does seem clear is that an expressed concern for maternal and child health among family planning officials contributes measurably to community acceptance of population programs and over the longer term may create a better climate for fertility control.

4. Reducing Income Disparities

Many social scientists now believe that, particularly in countries with wide income disparities between rich and poor, those couples living on the edge of subsistence have little incentive to plan their families and may view children as their only source of current gratification and future security. It would follow that some increase in incomes for the poorest families would create a climate of hope in which parents might limit their fertility in order to assure a better future for their existing children. Particularly in rural areas, development programs that break down the traditional sense of fatalism and expand horizons may pave the way for a whole new set of behavior norms, including family planning. Recent studies confirm that there is a threshold at which increases in income are statistically associated with fertility declines in some countries. The threshold appears to correspond with a shift away from a subsistence existence to a more secure form of livelihood. Further increases in income beyond the threshold point appear to have less impact on fertility.

However, as with other indirect fertility determinants, the evidence on income and fertility is mixed. In several Asian countries, poverty resulting from landlessness or unemployment forces couples to limit their fertility because they have no means to support additional children. In this situation, improved income distribution could increase fertility over the short term. Higher incomes could also increase population growth temporarily by permitting less reliance on breast-feeding, lowering death rates, and reducing infertility associated with malnutrition and disease. These upward pressures on birthrates are, of course, short term. In the long-run, improvements in the quality of life probably have important effects on family size ideals.

I believe that these few examples illustrate both the opportunities and difficulties facing policymakers in the population field. In over a decade of experience in program implementation, however, we have learned a great deal. We now know at least in general terms which programs work and we can say with some assurance what the impact of given amounts of additional resources would be. With respect to family planning services, we are reasonably sure, for example, that a doubling of program resources by 1985 would result in a doubling of contraceptive prevalence by 1990 and that this higher level of prevalence would mean a world population in the year 2000 of one-half billion people less than currently projected. A commensurate increase over the same period in resources for female education and training, maternal and child health and other relevant programs would in addition help create a climate in which smaller families eventually become the norm.

C. Country Examples

That such results can, in fact, be achieved is indicated by the recent history of population programs in several key countries. These success stories may help bring down to earth some of my earlier statements and thereby provide an appropriate finish to my testimony.

1. Indonesia

The Indonesian population program, now reaching its peak effectiveness, is considered throughout the world as the model for community-based family planning efforts. Its Village Contraceptive Distribution Centers, enlisting local volunteers to recruit and supply family planning acceptors, now comprise 25,000 village distribution centers--one for every village on the main islands of Java and Bali.

Recent surveys of contraceptive use point to a success story rivaled only by China in family planning history. In just five years the average completed family size has dropped by over a third in Bali and by nearly 20 percent in most of Java. In Bali, over three-quarters of the married women are using family planning--a rate of contraceptive practice comparable to that of the United States.

These successes are all the more significant in light of factors traditionally assumed to mitigate against the acceptance of family planning: a national per capita income of just $180 a year, an overall infant mortality rate close to 150 per 1,000 live births, 50 percent illiteracy among adult women, and a diversity of ethnic groups and religions.

Indonesia has made a good start at solving its overpopulation problem. As the world's fifth largest country with over 135 million people, its progress is highly significant in demographic terms, and it serves as a pacesetter for the rest of the developing world. Due largely to energetic leadership from top governmental leaders, aggressive family planning and development programs, Indonesia has recently revised downward its population projections for the year 2000. There will be 50,000,000 fewer people than once expected. Still, even if birthrates continue to decline rapidly, there will be 215 million Indonesians by the turn of the century, and the number of women of reproductive age will have doubled, making additional population growth inevitable.

U.S. government commitments to the Indonesian program in the form of grants, loans and commodities have been crucial. They represent our largest outlay from the population account as well as our most stunning success.

2. Thailand

Thailand has earned an international reputation for devising innovative (and sometimes very colorful) ways to reach remote rural villages with family planning information and supplies. It was the first country in the world to encourage oral contraceptive pill distribution through auxiliary medical workers. Today, community-based contraceptive distribution programs are operating in over one-third of all villages. In areas where these programs and government clinic services were available between 1974 and 1977, the number of births decreased by 40 percent. On a national scale, fertility has declined by about 20 percent and contraceptive use has risen 150 percent in the last six years.

The most rapid fertility declines have been achieved in the rural northern provinces which have had high-quality clinic and outreach services since 1970. In one such province, Chaing Mai, women are having an average of 2.6 children, significantly lower than the national average of 4.5. Both these figures represent a sharp decline from the completed family size of women aged 45-49--an average of 6.8 children each. Researchers attribute 47 percent of the fertility decline from 1968/69 to 1975 to organized family planning programs. Today, 46 percent of married Thai women are using contraception. However, nearly half of those who do not want any more children are not using modern contraceptives, indicating that the total demand for family planning services has not yet been met.

USAID has supported the Thai program since 1967 and has provided both bilateral assistance and support through private agencies; UNFPA also is a major supporter.

3. Colombia

In the past decade, Colombia has experienced the most rapid fertility decline of any country in Latin America. The achievement of a 29 percent decline in its birthrate between 1965 and 1976 is matched by very few countries. During this period, Colombia has had one of the most active and successful family planning campaigns conducted in a developing country. A University of Chicago study concluded that between 39 and 62 percent of the fertility decline could be directly attributed to organized family planning programs.

Profamilia, the private family planning association established in 1964, has won international recognition for its leadership in the family planning field. It was among the first to use mass communication to provide family planning information to the public, to establish large-scale voluntary sterilization programs for both men and women, and to sponsor community-based distribution of contraceptives to both rural and urban areas. Since 1970, the Colombian government has provided family planning services through clinics and hospitals and has supported communication and training activities.

The World Fertility Survey found that 52 percent of all married Colombian women were using contraception in 1976. Nevertheless, the demand for additional family planning services still exists: 44 percent of the women who did not want any more children were not using any form of contraception.

USAID has supported Colombia's program through various private agencies and the UNFPA.

4. Korea

Korea has one of the oldest and most effective family planning programs in East Asia. Since 1960, its birth rate has been nearly halved. It is now equal to that of Taiwan, which has a much higher per capita gross national product and a more urbanized population.

Korea is one of the few countries in the world where family planning services are widely available in rural as well as urban areas. The Mothers' Clubs organized by Planned Parenthood Federation of Korea cover more than half of Korea's 45,000 villages and offer a unique support system to women using family planning as well as a channel for information and supplies. The Korean government has provided family planning services since 1962. Knowledge of contraception is virtually universal, and 46 percent of the married women are using contraception. Researchers estimate that 37 percent of the fertility decline between 1963 and 1973 was due to organized family planning programs. In addition, a cost/benefit analysis found that the national family planning program, which cost $41 million from 1962-

to 1973, averted some 2.4 million births at a savings of $2.9 billion.

Korean officials are focusing their efforts on "problem groups" such as those couples who prefer sons, unmarried women, and those using ineffective methods. More than half of the women who do not want any more children are not using an effective method of contraception.

USAID has provided bilateral assistance as well as funding through private organizations and the UNFPA.

5. Mexico

Mexico's national family planning program, announced in 1972 and fully launched in 1974, has already begun to show dramatic results. In the first two years of the national family planning program, 1.9 million new acceptors were recruited by official health institutions. The proportion of married women using contraception increased from about 10 percent in 1970 to approximately 30 percent in 1976. Preliminary data indicate that by mid-1978 the prevalence rate had risen to 41 percent. No other country of Mexico's size can claim such a rapid increase in contraceptive use in just 18 months.

One attendant benefit has been a decrease in the incidence of illegal, self-induced abortions. One government agency reported that the number of women treated for abortion complications in its clinics was halved between 1972 and 1978.

Mexico's population is still growing at 3.1 percent annually--a doubling time of only 22 years--but the rapid adoption of family planning suggests that substantial changes in fertility patterns are underway. More than half (56 percent) of the married women surveyed in a 1976 study wanted no more children.

USAID has provided assistance through UNFPA, the World Fertility Survey and through private organizations such as IPPF and FPIA.

Representative **Hall**. Because I have information just to the contrary.

Representative **Mazzoli**. The gentleman's time has expired. The gentleman from Massachusetts is recognized for 5 minutes.

Representative **Frank**. Thank you, Mr. Chairman.

I apologize for having missed some of the earlier testimony and if my question is duplicative, ignore it.

GUEST WORKER PROGRAM

The question I would ask Mr. Conner is about the guest worker program. I didn't see anything about it in your prepared statement. Does FAIR have a position on a guest worker program?

Mr. **Conner**. Yes, we do. Every major guest worker program in the history of mankind has brought the receiving nation to grief. The earliest recorded history of a guest worker program is found in the Book of Exodus, about the Ten Commandments. The Egyptians couldn't find enough people in Egypt to do their stoop labor, so they brought in the Israelites, and they regretted it later.

Big guest worker programs create more problems than they solve. Every European country that has tried to create one has eliminated it. We recognize, just as in the old saying "The poor will always be with us," that H-2 workers will always be with us. There has to be some safety valve, but it ought to be kept under control and limited.

Representative **Frank**. I appreciate the answer because I share your opposition to the guest worker, although not with some of the same premises, but I was particularly interested in your allusion to the first of many emigrations which my people took, and what I am concerned about is that I don't want to shut off a right to others that has certainly been very useful to me and my own. [Laughter.]

Mr. **Conner**. Well, I have put my foot in it before but never that far.

Representative **Frank**. My question though does go actually to the whole panel and I understand some of the concerns, and I think I have a somewhat different opinion. There have been references before to the possibility that if we kept up our current immigration trends, 100 years from now one-third of the people in this country would be from families that weren't here at this time. I would almost be tempted to ask the panel how many of them would qualify under that rule, but I don't want to invade people's privacy.

U.S. OBLIGATION TO REST OF THE WORLD

But let me ask you, in terms of this calculation, and I understand that there are some problems that immigration causes, we have talked about this in terms of the American national interest, and I expect that that will govern, but do we give any weight at all to others? Is there any obligation for a country as wealthy and as well endowed as our own to share? I'll start with Ms. Eisen and ask you all. Is that some weighting in the ultimate policy judgment?

Ms. **Eisen**. Absolutely. I think that we do share. We have one of the most generous immigration policies in the world. We have the most open-armed refugee policy.

Representative **Frank**. And you wouldn't want to change that?

Ms. **Eisen**. I absolutely would not want to change that. I would want to see limits to it, so that the kind of backlash——

Representative **Frank**. Well, limits are a change.

Ms. **Eisen**. No, limits are not a change. Well, I agree with you. You are right. We would have to have clearly defined limits, unlike the kind of slippage that we have had, particularly with illegal immigration. Let me clarify that. If we could control illegal immigration in this country, we could be a lot more comfortable about our very generous refugee policies and generous immigration.

Representative **Frank**. OK because I would say with regard to refugees and with deference to my colleague from Texas, it may be that the Hmongs aren't going to be well integrated but they wouldn't be here if we hadn't been there, and I am prepared to——

Mr. **Sternberg**. Could I react to that?

Representative **Frank**. Yes.

Mr. **Sternberg**. Because the Hmongs have been mentioned twice as being a special problem for us, I do not know how well those who are here will adjust. Right now they are not trying very hard to come, anyhow. I know their children will adjust. But I also know that they died with us, perhaps died for us, and we should not deny them the right to live with us.

Representative **Frank**. I tend to agree. I think that is a case where, as I said, if we had not been in Cambodia they would not be here, and I think that is a reasonable trade.

But as a matter of general policy—Mr. Conner?

BRAIN DRAIN

Mr. **Conner**. If one is genuinely concerned about the poor people of the world, one is in favor of strictly limited immigration because one includes in one's concerns the people left behind. We took 808,000 people through legal immigration last year. That was one in 5,000 of the people of the world. Out of 5,000 impoverished people, we took one, taking the brightest, most able, most energetic, the best organized.

I wonder if the people in the Sudan are happy that they have lost 75 percent of the medical graduates they have ever had, or the people in Pakistan feel better off because 25 to 50 percent of the Pakistani medical graduates leave every year.

Representative **Frank**. I understand that point, although I must say my own view is that you don't impose on some people the obligation to stay behind. But I am interested to hear you so characterize the immigrants, and I assume you are talking about both the legal and the illegal immigrants in this regard, that what you are telling me is that the immigrants, the people who do come here, are in fact among the elite of their societies, that the people who we are dealing with are people who are among the most talented and the brightest and the natural leadership element?

Mr. **Conner**. Yes, sir, we are taking the cream of each social class by the standards of their society. In terms of their skills and their education and so on, we are taking the most energetic and talented.

Representative **Frank**. I understand. I must say I think the problems of adjustment can be exaggerated sometimes over time and unless you think that there is some inherent gap in the kind of people we are or in the genetic structure, I would assume——

Mr. **Conner**. I don't think anybody is taking that position today, Mr. Frank.

Representative **Frank**. Then if they are among the most talented and the able in one sector, it seems to me that given some time, that will work out in the other. But I am interested in having your affirmation because I think that is correct, that the people who are the immigrants, both legal and illegal, are in the fact an unusually talented and able and diligent group of people.

Thank you.

Senator **Simpson**. Thank you, Congressman Frank.

I think we will start the second round of questions, since the initial group have had that opportunity.

IMPACT OF REFUGEE ADMISSIONS ON SOCIAL SERVICES

Mr. Sternberg, I might ask you a question. We heard testimony from State and local officials yesterday who state that the present levels of refugee admissions are having a heavy impact on social services in many areas where the refugees are resettled. We know that is true.

In addition to sheer numbers, they state that current groups of refugees, many of whom are unskilled and illiterate even in their own languages, are taking much longer to resettle than earlier arrivals, and are staying on public assistance for long periods of time.

In view of what we are grappling with today on Federal resources and budget matters for many social programs for citizens, do you believe that a credible policy option would be to decrease the number of refugees admitted to the United States? If not, what alternatives might you suggest, short of increased Federal dollars—we are always told that that will solve everything, but I haven't found that to be the case—in order to counter this public resentment which is very real against large influxes of refugees and to assist refugees to becoming economically self-sufficient? That is a long question.

Mr. **Sternberg**. No, I understood your question, Senator. It is not a new question as far as I am concerned, and the criticism you have just raised is quite valid. You are speaking essentially of the Indo-Chinese refugees, and we have to realize that this issue is one which exceeds in its nature, is different in its nature than the regular refugee movements to the United States. And one cannot divorce the Indo-Chinese refugee problem in the United States, or Canada—Canada was mentioned in another context and Canada took in more, relatively speaking by size of population, of the same Indo-Chinese refugees. And Australia, which essentially is not a prorefugee country, has done its share by the Indo-Chinese refugees because of two factors which are terribly important.

One is the genesis of this situation, and the American role and the American involvement in Vietnam, Cambodia, and Laos, which we cannot just make disappear as much as we would like to do that.

Second, the unusual reasons which led to the flight of these people, from Vietnam, the boat people, from Cambodia, the survivors of the Pol Pot regime, from Laos, the same Hmongs who it appears have been bombed in their mountains.

And third, there is the terribly important political situation out there and the question to what extent the United States has political reasons to be more generous and more forthcoming to the Indo-Chinese refugee group than we are to other refugee populations. We cannot divorce our humanitarian concern for the Indo-Chinese, our historical tie with them, from the political situation now prevailing out there. And it would be naive to assume that we can just walk away from it.

ECONOMIC VS. POLITICAL REFUGEES

Senator SIMPSON. One of the things that has come to the attention of the subcommittees is the claim that many of the Indo-Chinese now being admitted are not really refugees under the definition of refugees, who have a reasonable fear of persecution, even as it is broadly defined under the new Refugee Act of 1980, but are in reality those seeking economic improvement or opportunity for family reunification. Do you have any comment on that?

Mr. STERNBERG. Yes, most definitely. That is the issue I tried to squeeze into my initial 5 minutes. It leads to the perception of those who claim that the boat people can go home, the Cambodians can go home, the Laotians can go home, and nothing will happen to them. That is completely erroneous, has no basis in fact, and in a way exculpates the sins of the governments of those countries.

Senator SIMPSON. So that their fear is very real?

Mr. STERNBERG. Their fear if they return is well founded and fully within the meaning of our definition of what a refugee is and should be.

Beyond that, we have the situation of young men who fled because they didn't want to serve in the armies of these three countries. So findings, if there have been such findings, that they are not refugees because they can go back, are on the face of it not believable.

Senator SIMPSON. Well, we are in the very real "Catch 22 C" situation. Some persons come here for economic reasons solely, and thus would not meet the definition of refugee, except that if they were returned, they would be subject to some kind of sanctions for the act of leaving. So we will go around the merry-go-round on that one, too, I suppose.

Mr. STERNBERG. Well, I am not quite sure I understood your question, but the definition of refugee is a simple definition. It is the definition of the Refugee Convention, and the definition of the Refugee Act. It has two components. People who flee because they suffered persecution and people who flee because they have suffered persecution or for any other good reason and because of their flight—the flight might be the crime for which they will be punished—because of their flight, cannot be returned.

An example I have used before, take any of the prominent Russians who have fled. Take a Russian diplomat who might defect.

Obviously he does not flee because he suffered persecution in Russia. He has other reasons, and I believe valid political reasons. Otherwise, he wouldn't defect. Yet, we cannot return him.

Senator **SIMPSON**. Thank you.

Mr. Chairman?

Representative **MAZZOLI**. Thank you, Mr. Chairman.

REFUGEE RESETTLEMENT PROGRAMS

I have a couple of questions. We were in California, as the gentleman from Texas said, and it was very interesting to see some of these resettlement programs in action. We found that they were a mixed bag. Some were doing an excellent job of training even the Hmong people whom we have unfortunately singled out for discussion. They aren't terrible looking. They look like human beings. They just happen to come from the hill country of Laos. Many are learning English and many are working. There is nothing like a red A in the middle of their foreheads, and I think we ought to be sure the record shows that.

In any event, there are some agencies that are doing an excellent job of teaching even the hard to teach people English in order to get them into the survival mode, in order to work and raise their families. Some are doing a terrible job. Some of the agencies apparently do consider the local government situation before they resettle and some agencies don't.

I would like to ask Ms. Alesi, does your agency or any of your people take part in the so-called body auction that occurs in New York on a Monday?

Ms. **ALESI**. No, we do not.

Representative **MAZZOLI**. Does your group, Mr. Sternberg?

Mr. **STERNBERG**. Yes; but there is no auction and it is usually Wednesday.

Representative **MAZZOLI**. Thank you. I had the right church, wrong pew. Let me ask you, do you take part in the one on Wednesday?

Ms. **ALESI**. Mr. Mazzoli, may I say something about this? I think the concept of sponsorship is growing, voluntary sponsorship by church groups. If we do take on additional numbers, because of our courage, tradition, and feeling for people, this responsibility, there are now, besides the resettlement agencies, private individuals——

Representative **MAZZOLI**. Please, I don't mean to interrupt you. Unfortunately my time is very limited. What I am trying to drive at is we heard that these volunteer agencies, because you are getting a bounty for each person who is resettled, are sometimes not particularly careful about the kinds of people you will accept for resettlement. For example, there are active tuberculars who are being settled in southern California. There are people who are supposed to know some kind of English from the refugee camps who don't know any English at all.

There are sponsorships, we are told, by people who are on welfare in California. They sponsor the admission of other refugees who immediately get their medical card and then they are on welfare in California also.

Can you tell me about that? I have the highest regard for charitable institutions who are trying to help unfortunate people be settled, but when you don't consult local government on how many they can adequately assimilate, and you don't protect against the admission of diseases like tuberculosis, then I am not sure what sort of a job you are doing.

Mr. STERNBERG. I will try to respond. All these questions are proper and weighty questions. No doubt there are very good resettlement experiences and very poor ones, and if you were in Santa Ana, as I believe you were, you hit one of the major problem areas of the refugee resettlement operation. In the long run, I believe Santa Ana and Orange County will be a success story, but we will need a bit of time.

Now let me return first to this term of the auction. It is a newspaper article which created the impression that refugees were being auctioned off. There is no auction whatsoever. The representative of the resettlement agency, they are the ones in whose name we prepared the testimony we submitted to you—they are the 10 agencies which I listed a little while ago—they do meet once a week. They receive from overseas the names and characteristics of refugees approved for admission to the United States.

Representative MAZZOLI. Approved by whom?

Mr. STERNBERG. By all the Government agencies, including the Immigration and Naturalization Service. This group does not accept refugees for sponsorship prior to their approval by the——

Representative MAZZOLI. In other words, if an active tubercular comes into the United States, then it is the fault of the Immigration and Naturalization Service?

Mr. STERNBERG. It is not the fault of the INS.

Representative MAZZOLI. It would not be the fault of the Immigration Service?

Mr. STERNBERG. It is the Public Health Service that is out there.

Representative MAZZOLI. Who are out in Malaysia and other camps?

Mr. STERNBERG. I believe the admission of people suffering from tuberculosis is legal at this stage, and I believe it is monitored and treatment is given upon arrival.

Representative MAZZOLI. I may be wrong, but I understand that if people test positive, but don't have active tuberculosis, they still have to take medicine or else they can become virulent and it can become contagious. We want to be as sympathetic as we can, but I am not quite so sure that sympathy ought to extend to taking in active health care problems, which are then dropped into areas where there are other factors.

My time is about to expire, but I am going to try to pursue this point, because if the Immigration and Naturalization Service is at fault, if the Public Health Service is at fault, if the U.N. High Commissioner is at fault, I think it is absolutely reprehensible that any active tubercular case would ever be admitted into the United States, or anybody that has certain parasitic diseases or other kinds of highly contagious wasting diseases. I think that is wrong.

Second, let me say, I opposed the war in Vietnam, but at the same time we can't be fighting that war for the next 20 years. I don't think we should necessarily show inordinate sympathy or some kind of undying devotion to peoples around the world. Not everyone who allied himself with the United States suffered as a result of that. We suffered mightily as a Nation. I think that chapter has to be closed. This committee, if we write a bill, can't take any bill to the floor that has our hearts sitting outside of our chests. We can't do that.

All the people who can help us, can help us far better by telling us what we do with what we deal with today, and not with what happened in 1964.

I yield back my time.

Senator SIMPSON. Thank you very much. Congressman Sam Hall of Texas.

OBLIGATIONS FOR REFUGEE ADMISSIONS

Representative HALL. Mr. Sternberg, I believe there are some 17 million refugees in the world today. You have people in Afghanistan; in Africa; you have them in all areas that we have heard so much about.

Do you believe that it is a function of the U.S. Government to fullfil some obligation to admit those people into this country?

Mr. STERNBERG. No, sir, I do not believe so. There are indeed 17 million refugees in the world. I believe the figure with which the administration is coming in for consultations with you will be 187,000 for fiscal year 1982, which is not 17 million. The Sudan, the pitiful Sudan, has 500,000 refugees from Ethiopia. Pakistan, pitiful Pakistan, has 1.5 million refugees from——

Representative HALL. How many of that 17 million do you think it is the responsibility and obligation of the U.S. Government to take in?

Mr. STERNBERG. The figure for fiscal year 1982, with which I would go along, is 187,000.

Representative HALL. I am not speaking of just fiscal year 1982. I am talking about over the entire spectrum, using the 17 million figure that we are talking about. Now you say it is not our obligation to take all of them over here.

Mr. STERNBERG. No.

Representative HALL. How many of the 17 million do you think that, in time our country should accept here?

Mr. STERNBERG. Of the major refugee groups, we never accept but a very tiny percentage. Of the Afghans in Pakistan, we take 3,000 to 4,000 a year and I hope we can continue that because there are 1.5 million in Pakistan. It is much poorer than we are.

Of Ethiopia, Sudan, Djibouti and in Somalia, there are perhaps 2 million now. We take perhaps 2,000 or 3,000 a year, a small fraction. I hope we can continue that for many years to come.

The Indo-Chinese situation I tried to touch upon. It is a special situation that requires political sensitivity, and humanitarian concern. It does involve much larger numbers.

Representative HALL. Do you think there are any of these 17 million people scattered throughout the world in certain areas that the United States should say "hands off" and have nothing to do with bringing them into this country?

Mr. STERNBERG. No, I do not believe so. There is no group which by definition, which by definition is outside the scope of the special humanitarian concern of the United States, of which the Refugee

Act speaks; none by definition. In practice, many are. We don't touch many of these groups.

Our initial plea was to implement the Refugee Act in such a way that isolated pockets of refugees have at least a chance to apply for admission. No group is by definition outside the scope of our concern. We do have a heart, which we should not just pull out when the situation is good. Our heart has to be in situations that are pretty troublesome, as it is right now.

Representative **Hall**. I yield back my time.

Senator **Simpson**. Thank you. Let me recognize Congressman McCollum for his questioning and then come back and have Congressman Frank conclude his second round.

Representative **McCollum**. Thank you, Mr. Chairman.

ASYLUM CLAIMANTS

Mr. Conner, I am particularly intrigued by a couple of things that counsel over here says that haven't been asked of you about your statement, and I apologize for being late today. On page 7 of the statement you discuss the mass arrival of asylum claimants, as in the Cuban flotilla a year ago, and the fact that the Commission staff council concluded that influxes will happen again and there was no reason to believe this is a unique occurrence.

You go on to criticize, though, the Commission report because you say "But the Commission, instead of designing measures to prevent such movements, focused on means to accommodate them."

What would you do to prevent such influxes? What suggestions do you have?

Mr. **Conner**. If you have a ceiling on total immigration into the country, it generates a different domestic discussion about how to handle such a potential flow. If the Cuban community in Miami had faced the fact that, by bringing people from Cuba to the United States, it would mean people in Southeast Asia would have to wait for those people to be permanently admitted, I think there would have been a different discussion within the Cuban American community about what to do.

Representative **McCollum**. So you favor a total cap?

Mr. **Conner**. If you start with a total cap, you at least have a beginning discussion point.

The second commitment is to enforce the law. The Carter administration vacillated on that key point. They gave a signal to people in the Cuban American community. They gave a signal to the big boats, the fisherman, and in fact it was quoted in Time. Administration officials said, "We decided it would be counterproductive to enforce the law," sending a clear signal both to the people in the Cuban American community, the people who benefited financially from going to collect people, and Fidel Castro himself.

We need a commitment to enforce the law that says if you live in San Antonio and you want to take a bus to get your relatives, you are going to face a penalty. If you live in Miami and you are going to take a boat to get your relatives, you are going to face a penalty.

We also have to do something to affect the incentive or desire of the individual thinking about leaving Cuba or Haiti or some other country to flood our shores. That involves eliminating these labyrinthine procedures that take forever to review a person's claim for asylum, whether it's a valid claim or not. If the person can take forever with the procedure and work during that time, a clear message is sent to people in Haiti, in Cuba, and elsewhere to come on over.

The last thought that we have is that the legal status of individuals waiting for their petitions for asylum simply cannot continue as it is today. As it stands, someone who forces their way into the United States essentially may stay for good and essentially has all the rights, privileges, and services of an American citizen.

Tough matters? Absolutely. But if we do not deal with it, we are sending a message. and the message is that if you get yourself into the United States, hold up your hand and say I apply for asylum, you can stay for a long time and work. Someone has said that when the only way to get into the United States is to be an asylee, everybody will be an asylee. There are a lot of people trying to figure out a way into this country and we are sending them a signal. We have to change that signal.

Representative McCOLLUM. Let me ask you this: Am I hearing you correctly that you believe that included in the total cap should be those seeking asylum as well as those who are refugees, as well as those who are spouses, as well as those who are children, et cetera, an entire total cap?

Mr. CONNER. Absolutely.

Representative McCOLLUM. One other question in the same paragraph. You say,

> Further, the Commission did not offer any guidance on how to deport illegal immigrants when, as in the case of the Cuban entrants, their home countries will not take them back.

What suggestions, what guidance would you give us?

Mr. CONNER. If you start with a notion of a limit, then you try to avoid creating a situation where you have people to return, for example, to a Cuba. In a situation where Fidel Castro empties his prisons on the United States, in our view there is no acceptable policy other than returning those people to Cuba. That may take a long time. That is a sticking point beyond which we will not go until Fidel Castro takes those people back. Those people may have to be physically isolated for a period of time.

But our view is, and the Governor of Florida has suggested, that the United States should make a demonstration of its independence, of its determination to protect its national interest, to return the excludables to Cuba, and let the world watch.

Representative McCOLLUM. You are talking about his statement about returning them through Guantanamo, which both Congressmen Sam Hall and I have both advocated here, too, and I assume you would agree with that?

Mr. CONNER. Well, I think we should try to return them. Returning them through Guantanamo is a two-edged sword—I think there are alternative suggestions that have been put forward by others that I hope the administration is considering.

Representative McCOLLUM. What alternatives do you have in mind?

Mr. CONNER. One of the alternatives was to take one of the boats and sail it back in the other direction and get to the 12-mile 1 foot limit and put down a long anchor and let the world watch to see if

Castro is going to sink the boat with his own people in it, or, in the alternative, sail the boat right into the harbor.

Representative McCollum. What are the problems with the Guantanamo solution?

Mr. Conner. The problem with the Guantanamo solution, as we see it, is that people can start being pushed back over the fence the other way. The base gets water from Cuba and people pass back and forth through those gates, and I am not sure you want to propose a policy that has the entire American military coming down on your back.

We are not trying to say that this is a simple problem, and I think that until we can work out a diplomatic situation with the Cubans, we are going to have to take care of these individuals. But I don't think that the alternative of returning these individuals should be rejected out of hand. It has to be looked at closely.

Representative McCollum. Would you favor allowing the release of some of these prisoners, the deportables, which has been suggested as possibly coming forth shortly?

Mr. Conner. We do not.

Representative McCollum. I have no further questions. I will yield back the balance of my time.

Senator Simpson. Thank you very much. Congressman Barney Frank, please.

Representative Frank. Thank you, Senator. I expect that maybe the Space Shuttle might be the ultimate way for us to deal with that problem.

[Laughter.]

DISCRIMINATION OF HAITIANS

Representative Frank. I would like to ask Mr. Sternberg and Ms. Alesi. One of the points raised, and these questions I now have don't have to do with the ultimate number, but treatment of individuals and groups within whatever number is set, if there is one. The NAACP said, and I thought with some accuracy, that they thought there had been some discrimination in fact, whether intended or not, in the way in which the Haitians were treated recently, compared to some other groups.

I wonder, Mr. Sternberg and Ms. Alesi, if you would have any comment on that?

Mr. Sternberg. We called attention to that perception. I am not sure if in fact it is correct. I don't think it is correct, but there is that perception and we have to be very sensitive to the sensitivity of the black people.

Representative Frank. Do you think that the Haitians are being treated fairly in terms of their applications?

Mr. Sternberg. I believe there has been terrible vacillation. There have been better phases and worse phases and right now we are going through a pretty bad one.

Representative Frank. And worse than other groups?

Mr. Sternberg. Right now worse than other groups, yes.

Representative Frank. I would suggest that is probably a pretty good grounds for a perception of unfairness. Ms. Alesi?

Ms. Alesi. I believe that they are being treated unfairly.

EXCLUSIONS BASED ON SEXUAL PREFERENCES

Representative FRANK. Let me ask just one other question and I can yield back. One of the sensitive subjects, and I know the Commission, for reasons I can understand, decided not to get into it, but we do have the question of exclusions for among other reasons, people's sexual preferences. I wonder, again within whatever limit we have, whether any members of the panel think we should continue to exclude people based on their sexual preferences, or is that something we should dispense with?

Ms. Eisen, that ought to be an easy one for you, concerned with fertility. [Laughter.]

Ms. EISEN. I don't quite know how to respond to that. Are you suggesting that——

Representative FRANK. That we repeal the provisions of the law that say that we won't let you in here if you happen to engage in sexual practices that a lot of people who are already here engage in.

Ms. EISEN. I think that is archaic and unacceptable today.

Representative FRANK. So you would favor the repeal?

Ms. EISEN. Correct.

Representative FRANK. Thank you. Ms. Alesi?

Ms. ALESI. I favor repeal.

Representative FRANK. Mr. Conner?

Mr. CONNER. All we care about is the numbers. [Laughter.]

Representative FRANK. So you don't think within the limited number we ought to discriminate on that grounds?

Mr. CONNER. We don't either support or oppose changes in the current grounds for exclusion because——

Representative FRANK. You're concerned with only the overall number, Mr. Sternberg?

Mr. STERNBERG. I have no problem with that.

Representative FRANK. Thank you. Three out of four is not bad, and one neutral.

Thank you, Mr. Chairman. I will yield back.

Senator SIMPSON. One neutral? [Laughter.]

Representative MAZZOLI. Yes; but 3 out of 4 isn't 435, though, either.

Senator SIMPSON. As a prerogative of my raw power as chairman, let me interject here that that did come up, and it was very vexatious to the Select Commission. Not one of us did not agree that the exclusionary conditions were archaic. They are; they need revision completely, from top to bottom. But the point was that we knew if we got into the issue of sexual preferences, that the work of the Select Commission would quickly disappear into the headline of "Select Commission allows homosexuals." I want to make clear that I have no desire to abridge any of the legal rights of homosexuals in the United States of America.

There was an interesting amalgam of persons who all agreed with that point. Let's not put that out as an issue because, frankly, it will quickly be taken and just divert us away from all the other things we are trying to do.

So, I wanted to add that.

Representative FRANK. Thank you. I appreciate that.

Senator SIMPSON. And thank you for that opportunity.

OK, now we have the next group, please. And thank you very much.

Representative **Mazzoli**. Thank you all very much. It was an excellent panel.

Senator **Simpson**. Dr. Leon Bouvier, director of the Demographic Research and Policy Analysis, Population Reference Bureau; Dr. Charles Keely, associate of the Center for Policy Studies and Population Council; Mr. David North, vice-president of the New TransCentury Foundation; and Dr. Michael Teitelbaum, program officer of the Ford Foundation.

Now here after I have you all seated, let's take a 5-minute break, if you will.

[A brief recess was taken.]

Senator **Simpson**. I introduced the panel before and I would do so briefly again. I'm sorry I didn't get down to say hello during that interim but they handed me some remarks I am supposed to make on the Senate floor in a half hour, and I am scribbling on those instead of my chores here. Dr. Leon Bouvier here on my left, Dr. Charles Keely, Mr. David North, and Dr. Michael Teitelbaum. It is a pleasure to have you all here in this very distinguished panel, and we are greatly looking forward to your testimony. So if you would proceed, please.

STATEMENT OF DR. LEON BOUVIER, DIRECTOR, DEMOGRAPHIC RESEARCH AND POLICY ANALYSIS, POPULATION REFERENCE BUREAU

Dr. **Bouvier**. Thank you very much, Senator Simpson. I am presently Director of Demographic Research at the Population Reference Bureau, but I am appearing before you solely in my personal capacity.

In my comments today I would like to concentrate on one subject only with reference to the Commission report, and that is the impact of immigration on the composition of the U.S. population.

First of all, you undoubtedly have heard this in the last few days, a brief summary of some of the important changes in demographic behavior that have occurred in the last decade or so. Fertility in the United States has reached an all-time low. Indeed, at present levels of fertility, we will begin losing population without immigration in about 40 or 50 years.

Second, immigration levels have probably reached historical highs, if we include both legal and illegal movements.

Third, the source of immigration has changed dramatically in the last decade, first from Europe, to Latin America and the Caribbean, and more recentlv to Asia.

Together these three changes in demographic behavior will have a tremendous impact on both the size as well as the composition of the U.S. population for many years to come. Which brings me to the two crucial questions I wish to address, one demographic and one sociological.

Demographically, should we develop a population growth policy that calls for eventual zero population growth, or even negative growth, or on the other hand should we conclude that continued unimpeded population growth, in the United States is good, not only for the United States but for the world?

Sociologically, do we as Americans in 1981 prefer to maintain our present racial ethnic balance, what I label the status quo society, or are we willing to undergo a major change in our societal make-up that will result from continued high levels of immigration, what I label the multicultural society?

To me these are among the more important questions facing this committee, especially in light of the fact that the Commission report only devoted five lines to the demographic question and nine lines to the sociological issue.

Let's look briefly at the demographic question. While there are various positions ranging all the way from continued and even expanded growth to those urging negative growth as soon as possible, I believe there is a growing consensus toward eventual zero growth. Indeed, if present fertility behavior continues into the future, and if net immigration is limited to about 750,000 a year, we can expect zero growth in about 75 years.

But, fertility is particularly volatile. It changes very quickly, and knowing that, we have to watch it and monitor it all the time. For example, if fertility goes up just a little bit, to about 2.0 and if we wanted a zero growth society of 300 million, then our immigration levels would have to fall to about 250,000.

The second question is more agonizing. Do we prefer the status quo society, or do we prefer the multicultural society? Briefly, the status quo society as I see it reflects the present ethnic social composition of the population, some "melting pot" activity within an Anglo conformity umbrella.

The multicultural society visualizes a more culturally, pluralistic society, more diversity. The various ethnic and social groups are encouraged to maintain their own cultures, their own language. Anglo conformity gradually disappears.

Now looking at these two alternatives, the powerful demographic impact of both negative natural increase and the high levels of immigration cannot be minimized. If current demographic behavior continues as at present, about 40 percent of the population in 100 years will consist of post-1980 immigrants and their decendents. Of these, a significant majority will come from Third World countries, mainly Latin America, the Caribbean, and Asia. What will be the social response to these changes in American society? Will they be accepted or not?

So the controversy is concentrated on immigration between the restrictionists and the nonrestrictionists. The issue is not new. It has been around for a long time.

That leads us to some alternative scenarios. The demographic and the sociologic questions are important but I think that the sociological one is probably more apparent to most people.

If the status quo society position is desired and if fertility remains low, immigration would have to be limited to perhaps no more than 250,000 per year. On the other hand, if you still want a status quo society, you can do it another way by hopefully having fertility increase to above replacement.

The multicultural society is perhaps more likely to take place. Fertility is low and it will probably remain low. I would argue, however, that the pace at which we move towards a multicultural society might be slowed somewhat by limiting immigration to no more than perhaps 500,000 per year.

Some people oppose this type of discussion about the future racial and ethnic composition. It is easy to charge racism, xenophobia, and so forth. Stating that close to half the population in say the year 2050 or 2070 may well be what we call minorities today disturbs some people. But this is a racist statement only when perceived as such by those who are upset by the statistics. The same data can also serve as the basis for a new challenge for the nation as it continues to accept innovative people from all over the planet.

So whatever decision is taken, we have to face the fact that we have some awesome challenges before us. I would like to conclude with a statement by a distinguished demographer, Ansley Coale of Princeton. When discussing the need for eventual zero population growth, Dr. Coale then added, and I think this is important "The path to a stationary population leads to the need for very substantial social adjustments, some of them painful, that we must foresee and for which we must start to prepare."

It is time to prepare for the major cultural changes that are bound to emerge as a result of the changes in the demographic behavior of people at the present time and in the future. Thank you.

[The prepared statement of Dr. Bouvier follows:]

PREPARED STATEMENT OF LEON F. BOUVIER

Chairman Simpson, Chairman Mazzoli, Members of the House and Senate Subcommittees on Immigration, Ladies and Gentlemen:

My name is Leon F. Bouvier. Presently I am Director of Demographic Research and Policy Analysis at the Population Reference Bureau here in Washington. I have also served as demographic consultant to the Select Commission on Immigration and Refugee Policy and earlier to the House Select Committee on Population. I am appearing before you solely in my personal capacity.

In my comments on the Report of the Commission, I am concentrating on one particular subject: the impact of immigration on the composition of the United States population. There are other points in the Report that disturb me, particularly the misinterpretation of basic demographic findings and indeed the failure to consider in detail the purely demographic impact of immigration. Other panelists, I am certain will address this point.

In recent years immigration to the United States has received more and more attention from researchers, and the media, as well as from policy-makers in government. Three recent developments have contributed to the "discovery" of such a basic social and demographic phenomenon.

First, the 1965 Amendment to the Immigration and Naturalization Act (INA) led to major changes in the number of legal immigrants entering the country. With the switch in emphasis from occupational to family reunification preferences came an increase in the number permitted to immigrate. The overall number of legal immigrants accepted annually grew from 300,000 to between 400 and 500 thousand.

Second, illegal immigration, though always present to some degree in earlier decades, increased considerably during the 1970s. Apprehensions of illegal aliens grew dramatically from 345,353 in 1970 to well over 1 million in 1979. No one knows for certain how many undocumented aliens reside in the US or how many enter or leave in any given year. Estimates vary widely, from 2 to 12 million residents; from 100,000 to 1 million entrees with an unknown number returning annually.

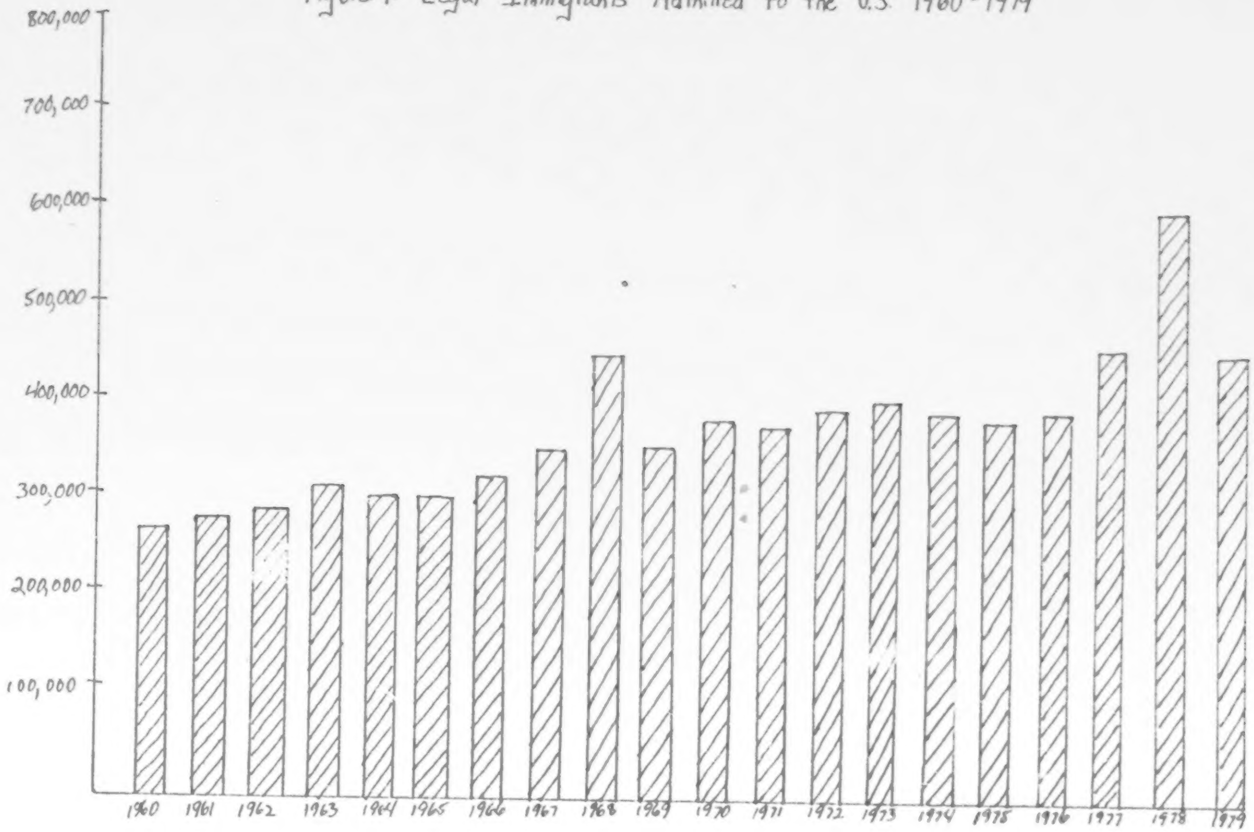
Third, refugee movements have grown from the 36,000 Hungarian paroles in 1956 to the current 200,000 plus refugees per year from South East Asia, the Caribbean and elsewhere. Indeed, the INA was amended in 1980 to allow 50,000 rather than 17,400 refugees to enter in any year without any special authority by the president or the Congress. Totals have been much greater because of special exceptions in Vietnamese, Cubans and others.

In combination, these three developments have resulted in significant increases in the number of entrees into the US--both legal and illegal. Figure 1 illustrates this growing phenomenon as it has developed since 1960. However, recent annual statistics are misleading. Refugees, for example, are not included until their status has been adjusted to that of legal immigrants--usually two years after actual entry. Illegals, of course, are not included. The Select Commission on Immigration and Refugee Policy estimates that in 1980 over 800,000 people entered the country legally, in addition to unknown thousands of clandestine entrees. There is no reason to anticipate any substantial declines in the foreseeable future, given current situations in many parts of the world.

Not only has the number of immigrants changed in recent years; so too has their country of origin. As Figure 2 shows, the sources of legal immigration have switched from Europe first to Latin America and the Caribbean; then, and most recently, to Asia. By 1979, fewer than 6% came from North and West Europe, while over 80% came from Latin America, the Caribbean and Asia. This is in stark contrast to the 1931-1960 period when 41% came from north and west Europe and only 20% came from the Third World.

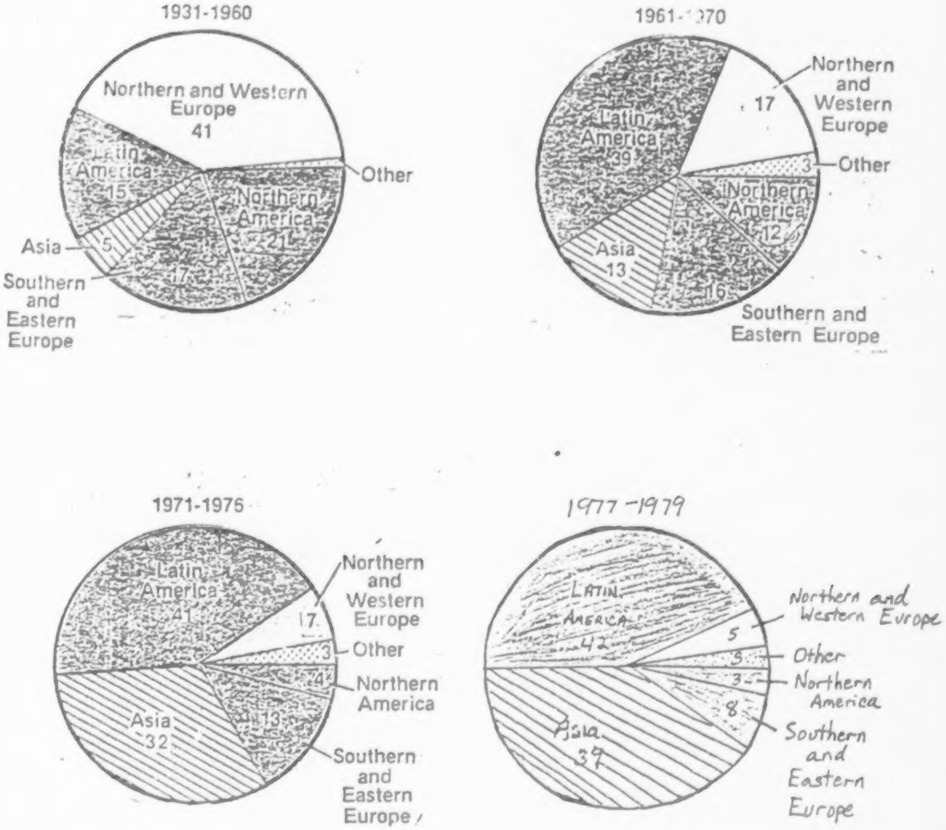
The evidence is clear: Immigration levels are high, perhaps as high as in the first decade of this century, when about 9 million people entered the U.S. The racial/ethnic background of these newest immigrants is vastly different from those coming in earlier decades. What does this all mean--demographically and sociologically?

Figure 1: Legal Immigrants Admitted to the U.S. 1960-1979



Note: Data is for fiscal years ending June 30 until 1976, then for fiscal years ending September 30.

Figure 2: Immigrants Admitted to the U.S. by Region of Birth



The Demographic Changes: Obviously, the greater the number of immigrants, the larger the total population. But the impact of immigration on population size cannot be studied in isolation. Population grows or falls in size through both, natural increase (that is, births minus deaths) and/or net migration. (that is, immigration minus emigration). More specifically, when looking at population change, both fertility and migration must be considered. (In the United States variations in mortality contribute only slightly to population growth or decline.)

It is especially important to bear in mind that fertility in the US is below replacement—or the level necessary to replace the population in the long run without immigration. Indeed, without any immigration and with continued low fertility, the U.S. population will begin to fall shortly after peaking at 245 million in 2025. Within a century, it will be just over 200 million and declining at a rate of .4 percent per year. Between 1980 and 2080, the difference between numbers of births and deaths will decline and gradually disappear. It follows that if immigration remains at a constant numerical level, it will represent a greater and greater portion of growth until that point in time when all growth will in fact come solely from immigration. (See Table 1)

TABLE 1

Actual Births, Deaths, Net Immigration, Assuming Total Fertility Rate of 1.8 and Net Immigration of 250,000, 1990-2050

	Annual Numbers (in 1,000s)						
	1990	**2000**	**2010**	**2020**	**2030**	**2040**	**2050**
Births	3,579	3,169	3,134	3,036	2,873	2,797	2,708
Deaths	2,243	2,470	2,672	2,905	3,317	3,566	3,510
Net immigration	250	250	250	250	250	250	250
Growth	1,586	949	712	381	-194	-519	-552
Total Population	238,623	249,539	256,890	261,736	261,219	256,580	250,720

Source: Leon F. Bouvier, "The Impact of Immigration on U.S. Population Size," Table 6, Population Trends and Public Policy, Population Reference Bureau, 1981.

Of course, interpretation of a change in the percentage of population growth due to net immigration requires knowledge of the direction and size of change of all four components of population change: fertility, mortality, immigration and emigration. Thus the number of immigrants can decrease while the percentage of population growth due to immigration increases.[1]

Changes in fertility are even more important than in immigration insofar as future population size is concerned. For example, if net international migration* is held constant at 500,000 an increase of just 10% in fertility (from a total fertility rate of 1.8 to 2.0)** adds 7 million more people in 20 years, 24 million more in 50 years and an additional 59 million in 100 years. On the other hand, a 50 percent increase in net international migration (from 500,000 to 750,000 per year) holding fertility constant at 1.8, increases the population by 6 million more in 20 years, 17 million more in 50 years, and 33 million more in 100 years.[2]

What then will be the size of the U.S. population in 2050-in 2080? If net international migration (legal and illegal) hovers around 1 million as at present and if fertility remains at its present low level (TFR = 1.8), in 50 years the population will reach 310 million, and in 100 years it will be about 335 million and still growing albeit very slowly. Limiting net international migration to 750,000 annually would lead to a population of 300 million in 2080 at which time growth would have almost come to an end. An increase in fertility of 10% would result in a population in 2030 of 319 or 336 million and in 2080 of 372 or 409 million with immigration levels of 750,000 or 1 million per year. The effects of various levels of fertility and immigration are illustrated in Table 2 and Figure 3 below.

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* An unknown number of residents of the US leave the country every year. The number has been estimated as high as 100,000. In interpreting these data, these factors should be taken into consideration.

** In this report, the total fertility rate (TFR) is used to indicate levels of fertility. The TFR indicates how many live births a woman would have if throughout her reproductive years she bore children at the rates which women of all ages actually did bear children in a specific year.

TABLE 2

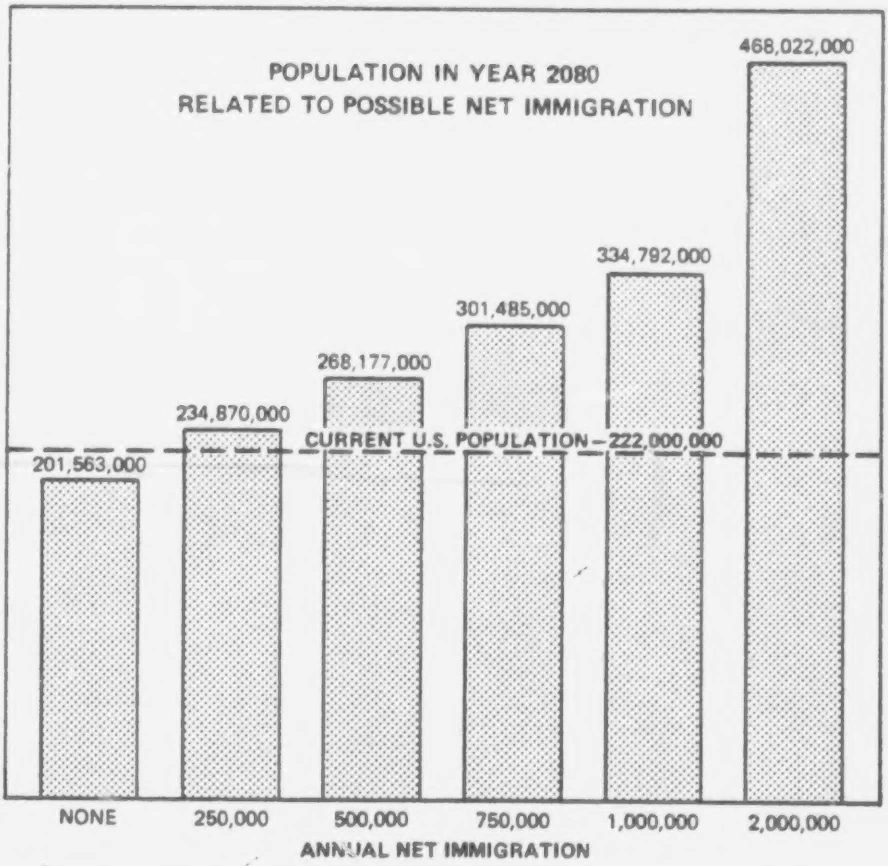
Projected U.S. Population Size and Growth Rate, 2000 to 2080, By Level of Annual Immigration and Total Fertility Rate

	Year							
	2000		2030		2050		2080	
Total Fertility Rate	Total Population (1,000s)	Pop Growth Rate (%)	Total Population (1,000s)	Pop Growth Rate (%)	Total Population (1,000s)	Pop Growth Rate (%)	Total Population (1,000s)	Pop Growth Rate (%)
(A) Annual Net Immigration = 0								
1.8	243,677	0.3	244,835	-0.2	227,315	-0.4	201,563	-0.4
2.0	250,348	0.4	267,797	0.03	264,851	-0.06	260,790	-0.05
2.2	257,722	0.5	295,010	0.3	311,603	0.3	341,266	0.3
(B) Annual Net Immigration = 250,000								
1.8	249,539	0.4	261,219	-0.07	250,720	-0.2	234,670	-0.2
2.0	256,318	0.5	284,928	0.2	289,904	0.08	297,927	0.1
2.2	263,809	0.6	312,998	0.4	338,612	0.4	383,209	0.4
(C) Annual Net Immigration = 500,000								
1.8	255,402	0.5	277,803	0.06	274,125	-0.08	268,177	-0.06
2.0	262,287	0.6	302,059	0.3	314,957	0.2	335,066	0.2
2.2	269,896	0.8	330,986	0.5	365,620	0.5	425,149	0.5
(D) Annual Net Immigration = 750,000								
1.8	261,265	0.6	293,987	0.2	297,530	0.04	301,485	0.05
2.0	268,257	0.7	319,190	0.4	340,009	0.3	372,204	0.3
2.2	275,983	0.9	348,974	0.6	392,631	0.6	467,096	0.6
(E) Annual Net Immigration = 1,000,000								
1.8	267,127	0.7	310,371	0.3	320,935	0.1	334,792	0.1
2.0	274,226	0.8	336,321	0.5	365,063	0.4	409,343	0.4
2.2	282,070	1.0	366,962	0.7	419,641	0.7	509,039	0.6
(F) Annual Net Immigration = 2,000,000								
1.8	290,578	1.1	375,907	0.6	414,555	0.5	468,022	0.4
2.0	298,104	1.2	404,844	0.8	466,305	0.7	558,011	0.6
2.2	306,419	1.4	438,915	1.0	527,677	0.9	676,806	0.8

Source: Leon F. Bouvier, "The Impact of Immigration on U.S. Population Size," Table 2, Population Trends and Public Policy, Population Reference Bureau, 1981.

Figure 3

The Impact of Immigration on U.S. Population Size*



*Assumes a constant fertility rate of 1.8 children per woman

The Sociological Changes: At least as important as eventual size is the sociological impact of immigration--more specifically, the changing racial and ethnic composition of the population and what that may mean. Dramatic turnovers in the composition of the region now known as the U.S. are not new. Consider the almost total disappearance of the Native American population between 1650 when it may have numbered as many as 10 million and 1850 when the Census enumerated 250,000. Consider the period between 1850 and 1950 when major shifts in the country of origin of immigrants resulted in a much more heterogeneous society than the heretofore predominantly "WASP" society (except for the black population, themselves descendants of people forced to migrate from Africa). About 40% of all residents in 1950 were either post-1850 immigrants or their descendants. A transformation of similar proportions may be forthcoming during the next century.

What proportion will post-1980 immigrants and their descendants comprise of the total population? A continuation of present patterns of low fertility and net immigration of 1 million will result in 40% of the population falling in that category; lower levels of immigration combined with higher fertility would lead to smaller proportions. For example, with fertility at 2.0 and net international migration of 500,000 per year the proportion of such immigrants and their descendants would be only 22% in 2080.

The Double Dilemma: Clearly, the next century promises to be exciting and challenging, both demographically and sociologically. Yet two major but not mutually exclusive questions must be faced by the American people as that era dawns upon us--one demographic, the other sociological.

Demographically, we must determine what our population size goals should be. Specifically, should we plan for eventual zero population growth at some future point in time? at some suggested size? Or, should we continue our present laissez-faire approach and even urge continued growth?

Extreme positions range from the advocates of continued and even expanded growth[3] to those urging negative growth as soon as possible.[4]

Both views present interesting arguments and these should be heard by policy-makers: however, there appears to be a consensus of opinion favoring eventual zero growth. This is particularly well articulated by demographer Ansley Coale: "We must have a stationary population eventually and in many ways sooner is better than later."[5] As was noted above, if present fertility behavior continues into the future, eventual approximate zero growth can be expected within a century if net international migration is limited to 750,000 per year. The population will then stabilize around 300 million before declining slightly to about 230 million in yet another 70 years when it will become stationary.[6]

However, both fertility and immigration are extremely volatile. While immigration can in theory be controlled, fertility can and does fluctuate widely over relatively short periods of time. Thus it warrants close monitoring if indeed a policy of eventual zero growth is accepted. Similarly, immigration levels should be set in such a way to counter-balance changes in fertility. Thus, an increase of 10% in fertility to 2.0 would necessitate a decline in net international migration to 250,000 per year if a goal of zero growth at 300 million were desired. This would, of course, necessitate "strict controls on illegal movements."

Although a majority of the people probably agree with the need for an eventual zero population growth policy, there may come a day when opposite views are embraced by the American public. Indeed, given the present administration's enamor of growth as examplified by National Growth Day, such a direction is indeed possible. On the other hand, environmentally oriented advocates of negative growth also offer interesting arguments worthy of consideration. These too might be accepted, if not under present circumstatnces, at some future date. All views should be heard and in arriving at a population policy decision, not only should we consider our [illegible] domestic wellbeing, but our role *vis a vis* the rest of the world. At any rate, the question is posed: "What should be our policy regarding population growth?"

Sociologically we must come to grips with an agonizing question.

Do we, the Americans of 1981, prefer to maintain, at least approximately, our present racial/ethnic balance (The Status Quo Society) or are we willing to undergo a major change in the societal makeup that will result from continued high immigration from Latin America, Asia and elsewhere (leading to a truly Multi-Cultural Society). The answer to that question will determine not only what the U.S. of 2080 (and sooner as well) will "look like." It may well determine its political, economic, and cultural future as well.

The Status Quo Society reflects the present ethnic/social composition of the population. It accepts some level of "melting pot" within an Anglo-conformity umbrella. Thus, while various ethnic and racial cultures are accepted, the language and laws of the country remain English.

The Multi-Cultural Society visualizes less of a "melting pot" process and more cultural pluralism and diversity. The many ethnic and social groups are encouraged to maintain their own culture and language and Anglo-conformity and what it implies gradually disappears.

In looking at these alternatives, the powerful demographic impact of both, negative natural increase and high levels of immigration cannot be minimized. However, to borrow from a recent statement of Kingsley Davis on a different issue: "There is danger, ... in deducing too much from demographic change alone without considering actual and potential social responses to the changes--responses often influenced by nondemographic developments in the social system."[7] If current demographic behavior continues as at present, we have noted earlier that 40% of the 2080 population will be post-1980 immigrants and their descendants. Perhaps 80% of these will be Hispanic, Caribbean, or Asian in origin. What will be the social response to these massive changes in American society? Will the society accept them or will it take "demographic" measures to foreclose such a possibility? The controversy is concentrated on immigration--pitting restrictionists vs advocates of more liberal quotas ("non-restrictionists").

Those arguing for the Status Quo Society are not necessarily racists and xenophobics as they are sometimes labelled, though admittedly some restrictionists are racist and xenophobic. Indeed, there are radicals and liberals and conservatives and reactionaries on both sides of this issue. While organizations such as the Ku Klux Klan want to keep "them foreigners" out to assure the "supremacy" of the white race, liberals like historian Otis Graham and others have argued eloquently for placing limits on immigration to better serve our own minorities, to allow us to continue our overseas assistance programs and in the long run, to encourage social reform in some of the sending countries.[8] As Washington Post editorial writer, William Raspberry, recently wrote: "Surely it cannot serve this country's interests to import millions of desperate people whose chief role would be to undercut America's jobless millions."[9] Finally there is a general feeling that "enough is enough." While we have traditionally been a haven for people from all over the planet, conservative Republican Sen. Alan K. Simpson (R.-Wy.) has commented on this point:

"The moving words on the Statue of Liberty are cited in nearly all discussions of U.S. immigration policy. The ideas expressed there are most appealing and are certainly consistent with the traditional hospitality and charity of the American people. It is imperative, however, that Americans perceive that this great country is no longer one of vast, undeveloped space and resources, with a relatively small population.

"In that earlier time, the nation could welcome millions of newcomers. Some brought skills. Many others brought few skills, but were willing to work. In a smaller America with a smaller, labor intensive economy and a labor shortage, that was often quite enough--that, plus their great drive to become Americans.

"Immigrants can still greatly benefit America, but only if they are limited to an appropriate number and selected within that number on the basis of traits which would truly benefit America.

"Compassion is a rich part of the American psyche and culture. I believe Americans feel it more deeply than any other people. Yet if elected and other government officials do not take care to control it in themselves and protect the national interest, not only will they fail in their primary official duty, but there is a very great risk that in the long run the American people will be adversely affected to a degree that they will be unable or unwilling to respond at all, even when the need for a hospitable America is desperate. I refer to this potential unwillingness to respond as 'compassion fatigue.' The signs are all around us that this is already developing."[10]

Those arguing for the Multi-Cultural Society express similar "Statue of Liberty" sentiments. Most Americans are here only because of earlier liberal immigration policies; many of our forebears suffered indignities at the hands of the restrictionists of an earlier era. Examples of such racial slurs are many. Consider, for example, the comments of the noted 19th century economist and once Director of the Census Bureau, Francis A. Walker who felt that immigration "...resulted in a replacement of native by foreign elements." For Walker, the essential question was how to protect "the quality of American citizenship from degradation through the tumultuous access of vast throngs of vagrant and brutalized peasantry" from the countries of east and southern Europe.[11] As prominent an intellectual as psychologist Lewis Terman commented in 1916 regarding Mexican immigrants that "high grade moronity to borderline mental deficiency was very common among Mexican families." He further argued that Mexican children "were uneducable beyond the merest rudiments of training. No amount of school instruction will ever make them intelligent voters or capable citizens."[12]

As such statements were proven patently untrue, so too were the fears about the impact of immigration on population growth and on the environment as expressed in the Dillingham Report and elsewhere.[13] Thus, it is argued, similar arguments offered today will again be proven incorrect. We are indeed a "Nation of Immigrants" though not a "melting pot." We should continue being the proud society that accepts and encourages many cultures and races. As Justice Reynoso of California has stated: "Americans are not now, and never have been, one people linguistically or ethnically. American Indians (natives) are not now, and never have been like Europeans. By the treaty which closed the Mexican American war our Country recognized its obligation to protect the property, liberty and religion of the new Americans. In short, America is a political union--not a cultural, linguistic, religious or racial union. It is acceptance of our constitutional ideals of democracy, equality and freedom which acts as the unifier for us as Americans."[14]

Again, one should not assume that all those favoring high immigration levels are liberals concerned with the betterment of the human species. As with the restrictionist point of view, one can find liberals and conservatives alike on the nonrestrictionst side of the argument. Some growers in the southwest and some factory owners in Los Angeles and New York often espouse "liberal" views on immigration; attempts to pass new restrictive legislation in the 1960s and 1970s were repeatedly bottled up in a Senate subcommittee headed by Senator James Eastland of Mississippi--himself a plantation owner. The President of the United States--certainly a conservative by any standard, has stated that he is "very intrigued" with opening the borders with Mexico.[15]

Thus the issue is drawn, but it is not a new controversy. As Charles Keely has pointed out: "The US has always been of two minds about new immigrants. On the one hand, the country has historically been a refuge, a place of new beginnings, accepting and even recruiting new settlers to build the nation and its economy. On the other hand, the theme of protectionism has found recurrent expression, in apprehension over the capacity of the culture and the economy to absorb newcomers..."[16] We are once again faced with this poignant and controversial issue--the result of major changes in demographic behavior on the part of both Americans and their reduced fertility--and non-Americans and their moves to the U.S. Where do we go from here?

Alternative Scenarios: While both the demographic and the sociological questions are important, the latter is perhaps more readily apparent to most people. Furthermore, while immigration can be manipulated in this country, fertility cannot, at least to a similar extent.

For the Status Quo position to be successful, immigration would have to be drastically reduced to perhaps no more than 250,000 per year--a very difficult policy measure to advocate. Considering the fact that fertility is below replacement, even such a low level of immigration would lead to an increase in the proportion of foreign born and their descendants over the long run, but this would occur at such a slow pace as to be hardly noticed. Such a scenario would also appeal to those favoring zero population growth in the near future.

The Status Quo society can be attained in yet another demographic manner. Should fertility climb in the near future to above replacement as has been predicted by a few economists,[17] fairly high levels of immigration would have little impact on the racial/ethnic composition of the nation. However, even with net international migration of only a half million and fertility at just above the replacement level, the population would almost double in size within a century to 425 million at which time it would still be growing at a rate of .5% annually. While perhaps appealing to growth advocates, it would doom any possibility of zero growth for perhaps centuries to come.

The "Multi-Cultural" position is perhaps more likely to become reality given present conditions in the U.S. Indeed, simply continuing today's pattern of fertility and immigration would result in a truly multi-cultured society within a relatively short period. Again there are at least two ways to reach such a society demographically speaking. In both, fertility should remain below replacement. The pace of change however would be slowed considerably if fertility were to rise slightly to perhaps 2.0 while net immigration was lowered to no more than 750,000 per year. About 30% of the population of 2080 would be post 1980 immigrants and their descendants. This proportion would of course increase over time, but at a relatively slow rate. The other alternative involves a continuation of today's pattern.

Conclusion: Some people oppose this type of discussion about the future composition of the U.S. population. Charges of racism and xenophobia are leveled at those who make such projections. Stating that close to half the population of 2080 may consist of minorities, as defined in 1980, sound disturbing to some people. Yet this is a racist statement only when perceived as such by those who are upset about these statistics. The same data can also serve as the basis for a new challenge to the nation as it continues to accept innovative people from every section of the planet.

However, let us make no mistake about it. The challenge will be awesome, as it was in the early 1900s. Furthermore such major changes in the makeup of the society will differ from those that occurred in the past. As a result, difficult questions regarding bilingual and even multilingual education, possible readjustments in political alignment, post-western civilization economic orientations, will emerge. One thing is certain, by 2080 we will be a vastly different society than we are at present--the result of radical changes in demographic behavior. Given current attitudes towards the new immigrants, perhaps the rapidity of the change should be slowed somewhat thereby allowing the American people to better adapt to the new society. Perhaps immigration should be limited to no more than 500,000 per year. Then, irrespective of changes in the level of below replacement fertility--a Multi-Cultural society would still emerge and the time elapsed would be greater; futhermore, zero population growth would be reached at a reasonably low level in a relatively short period of time.

Whatever decision is taken, it would be well to remember the second portion of the Coale quotation referred to earlier in this paper. Discussing the need for eventual zero population growth, Coale then added this extremely important warning: "The path to a stationary population leads to the need for very substantial social adjustments, some of them painful, that we must foresee and for which we must start to prepare." It is now the time to prepare for the major cultural changes that are bound to emerge from the demographic developments that will occur over the next century, developments that occur not only in the United States but throughout western Europe as well.

Footnotes

1. Keely, Charles, "The Estimation of the Immigration of Population Growth," International Migration Review, Vol. 8, Fall (1974) pp. 431-437.

2. Bouvier, Leon F., "The Impact of Immigration on U.S. Population Size," Population Trends and Public Policy, Vol. 1, (1981). All projections here are derived from that Report. See, in particular, pp. 16-19 for the assumption upon which these projections were calculated.

3. See, for example, Simon, Julian F. "The Case for More People," American Demographcs, Nov./Dec., 1979, pp. 26-29.

4. See, for example, Mann, Donald., "Urgently Needed: A National Policy to Reduce U.S. Population," Negative Population Growth, 1981.

5. Coale, Ansley, "Discussion I of Social Implications of Low Fertility," by D.E.C. Eversley in Social, Economic and Health Aspects of Low Fertility, A. Campbell (ed.). Dept. of H.E.W., 1980, p. 188.

6. For a mathematical explanation of this phenomenon see, Espanshade, Thomas, L.F. Bouvier and B. Arthur, "Immigration and Below Replacement Fertility: Long Run Implications," Demography, forthcoming.

7. Davis, Kingsley and Pietronella van den Oever, "Age Relation and Public Policy in Industrialized Societies," Population and Development Review, Vol. 7, No. 1, (March 1981), p. 14.

8. Graham, Otis, "Illegal Immigration and the New Reform Movement," F.A.I.R., Immigration Papers, Feb. 1980.

9. Raspberry, William, "Our Own Huddled Masses," Washington Post, April 8, 1981, p. A-23.

10. Simpson, Alan K., Supplemental statement by Commissioners, U.S. Immigration Policy and the National Interest, Select Commission on Immigration and Refugee Policy, (March 1, 1981), pp. 408-409.

11. Walker, Francis A., "Immigration and Degradation," Forum, Vol. 11, pp. 642, (1891).

12. Terman, Lewis., As quoted in Ehrlich, Paul A., et al., The Golden Door, Ballantine Books, New York (1979), pp. 220-21.

13. See, for example, the discussion in Higham, John, Strangers in the Land, Atheneum Press, New York, (1963) pp. 143.

14. Reynoso, Cruz, Supplemental Statements by Commissioners, op. cit. p. 403.

15. As stated in an interview with Walter Cronkite, C.B.S. News, March 3, 1981. See Immigration report, F.A.I.R., March, 1981.

16. Keely, Charles, U.S. Immigration: A Policy Analysis, Population Council, New York, (1979), p. 8.

17. See, for example, Easterlin, Richard, "Demographic Influence on Economic Stability," Population and Development Review, Vol. 4, No. 1, (March 1978), p. 1-22.

Senator SIMPSON. Thank you so much.

My colleagues in the House are involved in back-to-back votes on the budget, and they will return as soon as that procedure is completed. Now we have Dr. Charles Keely, please.

STATEMENT OF DR. CHARLES KEELY, ASSOCIATE, CENTER FOR POLICY STUDIES, POPULATION COUNCIL

Dr. KEELY. Thank you. My remarks today are under the general heading of unfinished business. The report of the Select Commission leaves a number of things unsaid, and the decisions will have to be made in Congress about them. It is also true that some of these issues may be dealt with in staff report, but it is also clear that a staff report does not have the weight of the Select Commission report itself.

SIX INCOMPLETE RECOMMENDATIONS

There are a number of categories of these recommendations that I would at least like to mention. The first is a group of recommendations that are really policy decisions with no particular discussion on the detail. The first of these has already been alluded to in the previous testimony; that is details on the grounds of exclusion to be substituted for the outmoded grounds.

The second is the question of the secure document for enforcing employer sanctions. Exactly what is that to be? How is to be instituted? And what would be the cost not only to the Government but to the private sector? I would suggest that there is a large national cost, even if widely distributed amongst many employers, which adds nothing to national productivity.

The third is the criteria for the independent category recommended by the Select Commission. To me the independent category is a Rorschach test. Everybody sees in it what he wants to see in it. That might explain a good deal of the ambiguity about the criteria for selection, as well as the Commissioners' own feelings concerning the nature of the independent category and details about the selection criteria.

Fourth, the preference category or the preference percentages for the family category. The Select Commission makes it clear that there ought to be percentages applied to those family preferences, but does not suggest what those percentages should be.

Fifth, the Select Commission also goes into a great deal of detail about why there ought to be a percentage of the total available limited visas for preference categories for each country. After that long discussion about why a percentage ought to be there, it does not suggest what that percentage should be.

And finally in this category about general policy direction without the detail is the suggestion or the recommendation for the phase-in of the enforcement, the backlog, and the legalization recommendations. Here I would suggest that it is not clear exactly what it means to have the enforcement package in place and effective. I would suggest that if that includes effective employer sanctions, there is a question about whether the amnesty in fact is something of an empty promise. An effective employer sanctions policy would mean undocumented aliens would be out of the labor force by and large. What they would do to maintain themselves between the time they are out and the time of an amnesty. The detail of the phase-in process needs to be clarified.

RECOMMENDATIONS WITHOUT POLICY JUSTIFICATION

There is a second category recommendation, that is, details about organization with no policy direction. The most important of these is mass asylum. A great deal of detail is given about an organization for dealing with mass asylum, but not a great deal of thought or context is given to the question of under what conditions should the United States be a country of mass asylum and particularly a country of first asylum.

Another one of the recommendations is the goal of flexibility. Although the Select Commission did not recommend an immigration board or council, they did recommend that there should be reports from the congressional subcommittees each year concerning the question of immigration. They did not tell us what authority that report has or how it should be acted on. To me it is an example of one more report.

Finally in this area I would suggest that the strong opposition to a guest worker program is somewhat blunted in the Select Commission report by the discussion of the streamlining of the H-2 program. The door is still left open.

RECOMMENDATIONS WITH NO CONTENT

There is a third category of recommendations which do not give, at least as I see it, a good deal of direction either on the policy or the organizational details. Here the discussion of the territories is most glaring. There is a discussion about some of the problems with the individual territories. Although I guess that one can conclude that there ought to be some flexibility vis-a-vis each separate territory, there is no particular information. Most glaring is the mere passing reference to the Free Associated State of Puerto Rico in that part of the discussion of the Select Commission.

Finally, the question of the review of consular decisions. The Select Commission does suggest an upgrading of the informal review that currently goes on, but turns down the idea of a full consular review similar to the Board of Immigration Appeals. The real issue is the broad authority of Consular officers. If it does lead to problems of inequity and lack of consistency, then we ought to have a policy recommendation about whether that discretionary power should be more limited and, if so, how it should be limited in a review proceeding.

OVERARCHING ISSUES: LABOR NEEDS, COSTS, FOREIGN POLICY

Finally, there are some overarching issues that I think really ought to be talked about. The first of these is the question of the labor needs and patterns in the United States. The Select Commission report makes a number of suggestions, both on illegal and legal immigrants, nonimmigrant visas and so forth. By and large, there is no well thought out framework to justify the relationship of the U.S. labor needs with the labor force availability in the coming 20 years, and the relation of that to the labor related recommendations in the Select Commission report.

Second, the Select Commission is curiously silent on the question of cost of all the recommendations involved. I would suggest on the issue of cost, particularly concerning the Immigration and Naturalization Service, that the Commission should have followed the idea of phasing things in in proper order. More emphasis should have been put on the management of the Immigration Service before we start to try to estimate how many more personnel, helicopters, sensors, and so forth ought to be made available. If effective management comes first, requests for additional resources may well be more modest and more credible.

Finally, on the issue of foreign policy, we are no further now than we ever were on that issue. I append to my testimony the testimony I gave last week to the House Subcommittee on the Census and Population. It goes into some detail on the foreign policy issues.

[The prepared statement of Dr. Keely follows:]

PREPARED STATEMENT OF CHARLES B. KEELY

I wish to thank the Chairmen and members of Sub-Committee for inviting me to present this testimony on the final report and recommendations of the Select Commission. I would first like to apologize for the telegraphic nature of my remarks but the time allotted for preparation for this testimony was rather short. I hope that despite this time constraint the testimony is of use to the Sub-Committee members in their deliberations.

My remarks will be divided into four areas. The first three will cover specific recommendations of the Select Commission and the final area of my testimony will be on over-arching issues concerning U.S. immigration and refugee policy.

Policy Decisions with No Recommendation Detail

There are a number of recommendations in the Select Commission report which indicate a policy direction but give very little guidance on the implementation of those decisions. I will list the six and give a short discussion of what the missing piece is, in my opinion, and in some cases the reasons for the failure, as far as I can detect.

Grounds of Exclusion. The recommendations of the Select Commission indicate that the current grounds of exclusion are out-moded and much too broad. However, the Commission does not suggest a list of grounds of exclusion that should be substituted for the current law. Perhaps we can look to the supplementary volumes on the legal research of the Select Commission for an alternate list of grounds of exclusion and legislative language to be incorporated in any reformulation of law. It seems that the reason for not substituting a new list was a fear on the part of some of the Commissioners that press reaction to a new list might overwhelm the rest of the work of the Select Commission. In particular, dropping homosexuality as a ground of exclusion may have led to press headlines like: "Commission Recommends Admitting Homosexuals as Immigrants." This kind of press reaction obviously would not be desirable and the decision not to include alternates to the current grounds of exclusion may be explained on that basis. Nevertheless, if one did not have access to the supplementary reports of the Select Commission, the daming of the current grounds with no substitutes seems curious indeed.

A Secure Document for Enforcing Employer Sanctions. It is clear that for an employer's sanctions policy to work, especially if wholesale discriminati is to be avoided, some mechanism must be available to employers to make a good faith decision concerning the employability of the job applicant. It should also be indicated that any identification card system, whether based on their social security or a different card or any on-line telephone sytem for checking employee eligibility, ultimately relies on other documents to prove that one has the right to be in the employable group. The issue of forged documents is not completely avoided. In addition, costs of such a system should include not only costs to government to initiate and maintain any sort of system for employers to check employability but also include the cost to the the private sector for the personnel processing and maintenance of records. The cost may be extremely high nationally although widely distributed among many employers. It should be remembered that there are some 69 plus million hires each year and there are more applicants for each job then that. Personnel offices and employers would therefore have to keep records and spend the time checking for the employability status of these applicants. Is this large national cost that adds nothing to productivity, even if widely distributed among employers, commensurate with the problem?

It seems the lack of detail on precisely what document or method for insuring a good faith check by employers and avoidance of wholesale discrimination is due to disagreement among the Commissioners about the costs, the feasibility and the civil libertarian problems that such a system would involve. Again, we readily see an explanation for the lack of detail. Nevertheless, sometime decisions on these kinds of details are going to have to be made.

Criteria for the Independent Category. The Select Commission separates the family from the labor-related admissions criteria. The non-family category is labeled "independent." I do not see any recommendations about the relative distribution of the size of the family and the non-family related preferences. I could be mistaken concerning this distribution, but if it is contained in the report it certainly is not in a prominent place. Within this independent category are to be accommodated small numbers reserved for investors, immigrants with exceptional qualifications, and a numerically unlimited category of special immigrants that current numbers about 2,000 a year. The criteria for the rest of the immigrants in the independent category are not very clear, although there is reference to relating these criteria to the labor market. The Commissioners were divided concerning the precise nature of the criteria and particularly the issue of job offers and labor certification. In short, the lack of specifity concerning the independent category probably results from the attempt to incorporate multiple goals under this residual category labeled "independent." The multiple goals makes the task of defining all the criteria and integrating them problematic.

Preference Percentages for the Family Category. The Commission recommends that preferences for family members be limited by percentages of the total number of family-related preference visas to be distributed within the non-exempt category. This recommendation is not accompanied suggestions as to what these percentages should be.

Country Ceilings. The Select Commission also recommends that country ceilings for selected preferences. The attempt here is to continue the policy of not permitting a single country to dominate in the use of preferences. The Select Commission goes into some detail emphasizing that this country ceiling should be a percentage of the total number of visas in the selected preferences rather than an absolute number (such as the current 20,000 per country ceiling for all preference categories). This detailed discussion on the desirability of a percentage as opposed to a absolute ceiling is not accompanied by a Commission recommendation on a particular percentage.

Timing of the Phase-In of Recommendations. The Select Commission wishes not to encourage further illegal migration and therefore recommends that there be a phasing-in of its recommendations beginning with an enforcement package and the mechanism to clear backlogs. What is not addressed is how undocumented aliens currently in the United States who would be eligible for a legalization program will be able to maintain themselves between the time of an effective enforcement package, including employer sanctions, and amnesty. This raises the question whether an amnesty is something of an empty gesture since an effective enforcement package would preclude persons currently in the United States illegally from working under effective enforcement conditions.

Recommendations Concerning Organization but Without a Policy Context

Some of the recommendations of the Select Commission go into detail concerning organizational matters but do not provide a particular policy context to justify the details recommended.

Mass Asylum. **The Recommendations of the Select Commission goes into a good deal of detail concerning the planning and implementation of a process for receiving large numbers seeking asylum in the U.S.. These organizational recommendations on mass asylum, however, not accompanied by any discussion**

about whether and under what conditions the U.S. should become a country of mass asylum and specifically a country of first asylum. Are we to assume that mass asylees would only be received if they can get into the U.S. on their own such as recent Cubans and Haitians entrants? If that was the case, does that mean that persons from, for example, El Salvador, would not be received under a mass asylum program were such a program in place at this time? Or does the Select Commission have in mind that the U.S. would not only be a country of mass asylum and first asylum to people who could get here on their own, but the U.S. may even comtemplate air or boat lifts of refugees directly to the U.S.? It seems that the recommendations on planning and reception of mass asylees is a reaction to the Cuban and Haitian movement of 1980 and, without any policy justifications, assumes that the U.S. should be ready for such movements in the future. While such planning may be wise, it is not clear that the Select Commission is the place to do it. The Select Commission, if it desired to make recommendations on planning and reception of mass asylees, should have recommended first and foremost whether and under what conditions the U.S. would be a country of mass asylum or would be a country of first asylum and what steps the U.S. can or should take when confronted with demands for mass asylum.

Flexibility. The Select Commission seemingly endorses the idea of flexibility in immigration policy. The Commissioners recommended support of the refugee mechanisms contained in the 1980 Refugee Act. On the other hand they turned down any Immigration Board or Council which would have authority to increase or decrease immigration within a five-year period or some other such mechanism allowing annual flexibility within a congressionally mandated limit. Instead the Select Commissioners recommended that Congressional Committees write a report after consultation with Executive Departments. The report of the Select Commission in no way iluminates or recommends what the status or power of this report should be. That staffs of the Committees could draft a report and have it approved by members does not indicate that there would be any flexibility in reaction to the information contained in that report, even if warranted. Preparation of a report is not a policy for implementing flexibility.

Temporary Workers. Some detail is given of streamlining the H2 program in the report. Clearly there was opposition among the Commissioners to endorsing an expanded temporary worker program by whatever name. While the Commission was not willing to endorse such a program, it also did not seem willing to close the door completely on that option. Therefore the H2 program was left intack with recommendations on streamlining. In short, the discussion of streamlining the H2 program really avoids the basic issue of whether or not to have an increased temporary worker program and provides a mechanism for doing so, other recommendations of the Select Commission notwithstanding.

Recommendations Lacking Clarity on Policy and Organization

A third category of recommendations give no clear guidance on either policy or program detail.

Territories. The report of the Select Commission briefly discusses problems particular to the various territories of the United States. Possible solutions are recommended to the particular problems in regard to the spearate territories. The Commission comes out with no clear or strong recommendations concerning immigration policy and the territories of the U.S. except to say that there ought to be flexibility in the application of immigration policy in regard to each of the separate territories. Although this may be a sound overall goal, one of the mandates of this Select Commission was to recommend policy concerning the territories. Recommending flexibility hardly gives enlightening guidelines to Congress on the particular issues involved with immigration and each of the territories.

Review of Consular Visa Decisions. By emphasizing an upgrading of the informal review of visa decisions that now exists in the State Department, Select Commission seems to accept that there are some problems of equity and consistency in visa decisions. However, the Select Commission turns down a recommendation for a formal consular review similar to the review available in exclusion and deportation hearings. The Select Commission does not give any specifics about how the informal review process will be upgraded. but merely suggests that it should be so. The issue is the consular discression contained in law. By avoiding this issue and by not specifying how to upgrade the informal review, the Select Commission seems to be saying that the administrative cost and problems attendent on a visa review board outweigh any problems of equity or consistency that currently exists. If that is the decision of the Select Commission, it should be clearly stated. If there is needed upgrading in the informal review, the Select Commission should suggest exactly what form that upgrading should take and what problems it is supposed to be overcoming.

Some Over-Arching Issues

If one looks beyond the recommendations such as those reviewed under the three previous general categories, it becomes clear that there are some broad issues that constitute the unfinished business of the Select Commission report. Three of these will be reviewed below: labor needs and patterns of the U.S.; costs of the recommendations; and immigration and U.S. foreign policy.

Labor Needs and Patterns of the United States. The Select Commission seemed to be preoccupied, if not overwhelmed, by the issue of undocumented migrants. If an immigration policy for the 80s and 90s is goal of the Commission report, than it seems imperative that a policy context on U.S. labor needs should inform such a set of policy recommendations. It is no help to say that any labor projections are useless. There are some things that we can say about the labor force in the U.S. in the near and medium term that ought to be used to inform policy decisions.

Clearly we need to review the availability, size, and composition of the labor force given current population in the U.S. for the next two decades. Even if labor force needs are inexact, some information can be garnered from an effort to match available supply under current conditions with expected needs.

Secondly we can get some hints at future needs by looking at those sectors of the economy that have grown in recent years, in particular those sectors that have absorbed large amounts of the labor force increase in the U.S. We should remember that the U.S. added some 18 million workers in the 1970s. The U.S. has done well in absorbing the baby boom into its economy. The growth of the labor force is quite high in comparison to other industrialized countries during the 1970s. The addition of this baby boom group is important for understanding both the productivity and investment patterns, as well as the performance of our economy during the 70s. Given these changes in the sectoral growth of the economy, particularly as it affects the labor force, we can perhaps get some insight into labor force needs by sectors in the coming years.

Beyond matching labor force supply and possible demand from information available on sectoral growth, we should also look at regional patterns of growth in the U.S. Experience from our own history and from contemporary international migration make it clear that workers go to growth poles, for example, the Middle East currently, or to a strong economy, for example, the United States. I would suggest that labor demand tells us more about the size and direction of flows than the supply of labor in sending countries. Supply of labor is a condition of possibility, but is is the demand that provides us the information about the movements themselves. In this context, I would suggest that you would not be misled by a demographic determinist that emphasizes the size of the population, and in particular growth of the labor force age group in sending countries. If you will permit me, an all too brief summary, we can learn more about illegal migration of Mexicans to the United States by studying the economic developments of the Southwest than by comtemplating Mexican population growth trends.

In short, there are things about the labor force and economic development in the United States that can be used to guide labor related recommendations on immigration. No such reasoned analysis of American economic and labor force development is contained in the report of the Select Commission as a framework to justify recommendations concerning illegal migration, the independent category, non-immigrant visa policy, or other labor related recommendations. In effect, the labor related recommendations seems to me disembodied, looking for a context to justify their existence.

Costs. The report of the Select Commission gives not clues concerning the overall costs implied by the recommendations. I say costs because I imagine most people would assume that the recommendations will cost more than current outlays. However, an expanded balance sheet could prove the opposite. One not only should look at costs to government to run the programs for enforcement and integration suggested by the Select Commission but also should look to the additions to the U.S. productivity, consumption, output, and tax revenues. However, there would be some immediate costs, even if they were outweighed in the medium or long term balance of the cost and benefits of immigration to the United States.

On the issue of costs I would point out that I think that the Select Commission and many others suffer from a knee jerk reaction to Immigration and Naturalization Service needs. The Select Commission calls for more resources and personnel, as do many others. This may, in fact, be necessary. But the Select Commission perhaps should have followed its earlier advice about proper phasing-in and suggested that the first need of the Immigration and Naturalization Service was for efficient management. The cost to clean up and one to run the system as it is currently organized may be much higher than the cost of getting the Immigration and Naturalization Service managed correctly and running smoothly and more efficiently. My point is not to say that a well run Immigration and Naturalization Service would not require more sources than currently. That may be the case. It would not require as much in terms of resources as continuing the current system where funds are expended trying to bail out the current organization and keep the leaky ship afloat. I might also suggest that some of the unreasonable demands on Immigration and Naturalization Service could be reduced. Some of these demands are produced by their own emphasis on excess paper and some by demands inititated outside the Service. In the latter context, I suggest, for example, that the required report for Congress on 3rd, 6th and non-preference petitioners receiving labor certification really are not necessary.

In short, if effective management comes first, requests for additional resources will be more modest and more credible.

Foreign Policy. I append to this statement the testimony submitted to the House Sub-Committee on Population and the Census at their hearings on April 27, 1981. I would summarize that testimony, without going into detail, by saying that U.S. immigration and refugee policy and international migration in general has not been and is not now a substantive issue for U.S. foreign policy analysis. "Substantive issue" is a "buzz" word meaning that the topic is not regularly monitored and integrated into policy options. This situation may not only be due to the complexity of the issues involved but also to the structure of U.S. foreign policy formulation. Immigration is handled by the consular cone of the foreign service. The consular group is far below the political, economic, and administrative cone in terms of the status hierarchy of the foreign service. Immigration is looked upon as merely a set of visa matters that sometimes spill over into the more important political and economic relations. By and large consular work is viewed as a kind of social work function. Thus, the integration of immigration into the concerns of political and economic offices is a difficult undertaking. This structural problem is probably a reflection of the training and interests of foreign policy analysts, in and out of government, in the political and economic affairs that are the traditional tools of the trade. The challenge, therefore, is to provide the training and intellectual tools to see the linkages and the implications of not only immigration to the U.S. but also international migration in general for the political and economic interests of the U.S. It may than be possible routinely to integrate the migration issue into policy options, whether the issue is U.S. business interests, refugee movement, legal or illegal migration to the U.S.

I have covered a good deal of ground, Mr. Chairman. As I said at the beginning I apologize if some of my references are a bit telegraphic. Clearly the mandate of the Select Commission was monumental. And the Commissioners and their staff are to be congratulated on the work that they did. It is not a rejection of that work to suggest that the work of the Select Commission is unfinished. It is inevitable that such a huge undertaking should have many loose ends, even in very important matters. It is now up to the Congress to deliberate on the recommendations and to make decisions not only about what is recommended but those areas that have received less than full treatment from the Select Commission. I hope that I and the others who appear before you can help in your work by going beyond pointing out the problems or shortcomings that may exist in our opinion and provide the more substantial aid of suggestions and options for your consideration. Again my thanks for your invitation to appear before the Committee.

Foreign Relations: The Neglected Dimension of US Immigration and Refugee Policy

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I have been asked to speak on the history of U.S. immigration policy and on the population dimensions on immigration. I submit for the record a copy of an historical overview of U.S. immigration policy and how we got to the issues which currently dominate immigration policy discussion. I will focus my remarks on an historically neglected aspect of immigration policy, namely U.S. foreign policy interests and immigration. This foreign policy aspect of immigration is not only historically neglected but also curiously and sadly absent to any serious and substantive degree in the contemporary immigration debate. We have all heard and read passing nods to unspecified important mutual ramifications of foreign relations and immigration policy. I regret that I have yet to see anything of conceptual or operational value that goes beyond this unspecified statement of mutual impact and that at least tries to gives directions for specifying what these mutual ramifications are.

Before sketching some ideas on this topic, I would point out that population in this context has two dimensions: the domestic and the international. I shall leave it to others to discuss domestic population implications. I would only urge the Committee to beware of numbers easily tossed off, requiredsources and justification for estimates, numbers, percentages and projections. Adopt for yourselves and your staff the discipline of a critical assessment of assumptions and methods used to generate the statistics that litter immigration discussion. On use of international population data, I would urge you to beware of the attractions of demographic determinism. That population growth rates may be high, that labor absorption capacities are strained apparently beyond endurance does not mean that everybody wants to, is able to, or without doubt will end up in the United States. Labor availability is a condition of possibility for manpower mobility. Experience in post-war Europe, in Venezuela, in South Africa, in the Middle East, in U.S. history, and even now in Mexico makes clear that the size and direction of labor flows are more a function of labor demand in receiving countries than labor supply in sending countries. If you will permit me to use a thumbnail sketch as an example, more can be learned about Mexican migration to the U.S. from study of the economic development, the flows of public and private capital and the changing nature of the labor force in the Southwest of the United States than can be learned from study of Mexican population trends.

Let me move more directly into discussion of the U.S. foreign policy and immigration policy relationship. First, despite our long history of immigration, today's movement to the U.S. does not take place in a global vacuum and is not just a continuation of past immigration. While the history of our policy and actions does shape our response, migration to the U.S. is part of a global population, and especially manpower redistribution. There have been massive movements of capital since World War II, oil money being the latest and most dramatic. But the Marshall Plan in Europe and movement of capital by investment, aid, and multilateral lending agencies have led to reshaping the international division of productivity. Patterns of who produces what and what is imported or exported are clearly changed. This movement of capital and redivision of production is mirrored in the movement of labor. What countries import or export labor and in what amounts presents a shifting picture. Italy, and Greece prime sources of European guestworkers, are now net receivers of labor. East and South Asian counties have major labor markets in the Middle East, a movement that has important labor force and balance of payment implications for the Asian labor exporters.

The apparent kaleidoscope of manpower movements does have an important structural regularity: the movement is to growth poles (e.g., the Middle East) and to relatively strong and stable economies (e.g., the U.S.). We should not lose sight that, despite our serious economic problems, the U.S. is still a relatively strong economy, especially in labor force terms. Between 1973-79, we added 11 million new jobs in the non-governmental non-agricultural sectors. Major growth was not in basic industries but in medical care, retail and restaurants, and office services.

Need we remind ourselves, therefore, that the structure of our economy, including the geographical location of growth and decline, are changing. Given changes in the world economy, the distribution of capital and production, and the changes in our own economy, what questions should we be asking about the impact of international migration for U.S. foreign policy interests? What are the implications for U.S. business, e.g., of Korean export packages, including manpower, in the Middle East? Can such project packaging be expanded beyond the Middle East and beyond construction into plant operation and management? How are U.S. interests affected when remittance dependent labor exporters lose such sources of capital, resulting in economic and even political destabilization, as in Turkey? What will happen to Jordan, North Yemen, Pakistan or Bangladesh if a major interpretation takes place in Middle East development based on oil revenues?

In short, world economic changes, including the accompanying manpower movements, affect U.S. interests. Movement to this country is enmeshed in this global manpower movement. These world changes affect our economy's structure, the labor demand in the U.S., immigration flows, our export possibilities, and our interests in labor sending and receiving countries. This global dimension, directly and indirectly, affects U.S. immigration. To concentrate on U.S. immigration as a purely domestic issue, with an internal dynamic divorced from the world economy, is too narrow.

Secondly, migration to the U.S. raises important questions for bilateral and regional relations. I have yet to see any conceptualization of the place of immigration, legal and illegal, in our relations with

Mexico. How do we link migration with issues of trade, economic development and oil in Mexico? What are our responses to Mexican suggestions of various linkages? Similar questions can be raised in regard to the Caribbean. I do not know whether the problem results: (1) from a flaw in our foreign policy structure, (2) from inherent difficulty of integrating a new factor, immigration, as a substantive issue in relations, or (3) from an inability, almost a physical aversion, of the foreign policy community to add a messy issue, that is domestically explosive and that is traditionally dominated by Congress and not the Executive Branch, into the traditional political and economic concerns of foreign service officers. Probably, all three factors are at work. The result is clear: an inability to get a handle on the immigration factor and integrate it into the traditional concerns of foreign relations analysts.

Lest I give the impression that the bilateral and regional relations are all focused on countries in the Hemisphere which seem content to have immigration to the U.S., we should remember Canada. Our neighbor to the North is currently concerned about our immigration policy and the proposed new selection procedures in Select Commission report on skilled migration from Canada. An area of concern is the enticement of labor in the oil extraction industry. Small numbers of highly skilled people in new technology areas like tar sands extraction can have large impacts. What is presented as a fair selection system can have unanticipated effects. In fact, a fruitful historical exercise is to review the unanticipated effects, domestically and internationally, of our past and current immigration policies.

Finally, I turn to refugees. We must strive to better anticipate the consequences of our foreign policy for refugee movements. Such analysis may not change our policy but will at least enlighten us to the full costs and help us prepare to deal with the consequences. Should the Cuban boatlift have been such a surprise given: (1) that we have had a 20 year economic blockade of Cuba; (2) that we knew of the scarcities of consumer goods symbolized by lines of people waiting to purchase food in Cuba; and (3) that Cuba permitted some 100,000 tourists, mainly Cuban Americans, to visit Cuba and their relatives displaying the fruits of their labor and experience in America? Perhaps we should be more surprised that the movement was not greater. Our policy in Central America may produce many refugees. To call Salvadoreans trying to get into or stay in the U.S. illegal aliens is a narrow legalism akin to sticking one's head in the sand. My point is not to criticize U.S. policy in Central America. My views on that are irrelevant to the point I am making. Whatever our policy, an integral consideration should be the potential for refugee generation, whether the U.S. or any other country becomes the country of first asylum. Even if we are not the first asylum country, we surely will be contributing money and supplies for refugees through the UN High Commission and other public and private organizations. The issue of the U.S. as a country of first asylum is yet unsettled and not adequately dealt with in the Refugee Act of 1980. It is an example of the complex intertwining of domestic and foreign policy. It certainly calls for creative foreign policy analysis as an ingredient of any immigration and refugee policy and legislation.

Nor should we forget the future. I need only mention Southern Africa and Eastern Europe to indicate the potential disruption of which refugee movement, care, and settlement would be a basic ingredient.

I have touched on three aspects of the relationship of foreign policy and immigration policy: (1) the web of international movement of manpower in response to world economic changes which directly and indirectly affects both foreign policy interests and the demand for and flow of legal and illegal immigrants to the U.S.; (2) bilateral and regional relations; and (3) the refugee consequences of foreign policy. I can be accused of Monday morning quarterbacking in my examples and of only raising questions and providing no solutions. I will accept the criticism. But I reject the position that one should not raise questions unless one has suggested answers. I do not need to be a chef to know that the soufflè has fallen. I would also point out that I have suggested that part of the problem may lie in the structure of foreign policy formulation and training of foreign policy analysts. It is all too easy to resist accepting new issues as really being substantive unless they can be easily integrated into traditional political and economic categories that are the tools of the trade of foreign service officers and foreign policy analysts in and out of government. I hope hearings like these, and those to come on immigration policy, can provide a catalyst for better thought and guidance on the specific links and mutual impact of U.S. foreign policy and immigration policy.

U.S. Immigration: A Policy Analysis

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My opinion, with respect to immigration, is that except of useful mechanics and some particular descriptions of men or professions, there is no need of encouragement, while the policy or advantage of its taking place in a body (I mean the settling of them in a body) may be much questioned; for, by so doing, they retain their language, habits and principles (good and bad) which they bring with them.[7]

George Washington to John Adams

We are the Romans of the modern world, the great assimilating people.[8]

Oliver Wendell Holmes

The United States has always been of two minds about new immigrants. On the one hand, the country has historically been a refuge, a place of new beginnings, accepting and even recruiting new settlers to build the nation and its economy. On the other hand, the theme of protectionism has found recurrent expression in apprehension over the capacity of the culture and economy to absorb newcomers, in the desire to limit labor market competition and assure minimal health standards, and even in nativism and racist theories. The history of immigration policy is a dialectic of these two themes of acceptance and protection.

Free Movement, 1790-1874

Before 1875, American policy is best characterized as neutral, neither encouraging nor discouraging immigration. Except for the Alien Act of 1798, which authorized the President for two years to deport any alien he considered dangerous to the United States, and which was not renewed, no federal legislation was enacted to restrict immigration or permit deportation of aliens.

Historically, the United States has both encouraged immigrants and expressed concern about the country's ability to absorb them culturally and economically

The widespread use of the word "immigrant" appears to date from 1817.[9] During the colonial era and the early years of the Republic, settlers were referred to as "emigrants": they migrated *from* somewhere. After 1817 they were perceived as migrating *to* a new nation, as part of a great experiment. Freedom and seemingly boundless opportunity invited people through the Golden Door. In terms of national survival, growth, and development, the immigrant was a blessing and a confirmation of the nation. But behind the blessing some saw danger. Benjamin Franklin "had misgivings about Germans because of their clannishness, their little knowledge of English, the German press, and the increasing need of interpreters. Speaking of the latter he said, 'I suppose in a few years they will also be necessary in the Assembly, to tell one-half of our legislators what the other half say.'" The stereotype of the rowdy Irish in tumbledown shanties, a "low and squalid class of people, who . . . keep . . . the surroundings in a filthy and disgusting condition," was born during this period.[10]

This period brought the first flowering of nativism, an "intense opposition to an internal minority on the ground of its foreign (*i.e.*, 'un-American') connections."[11] Nativism's roots long antedate the new nation. Early America's strongest antiforeign tradition originated with the anti-Catholicism of the Protestant Reformation. Provocative rhetoric (e.g., Rome: the Whore of Babylon) and tales of lascivious priests and nuns were widespread. Deep-rooted anti-Catholicism took on nativist overtones as Catholics were perceived as threatening foreign agents. "The Roman pontiff loomed in English eyes as the great foreign tyrant, menacing the nation and its constitution; his followers had the aspect of a fifth column."[12]

A second nativist tradition was the fear of foreign radicals, expressed in the Alien Act of 1798. Although America was created by revolution, Americans have interpreted their revolution as perfecting an existing social order with little social transformation. Other revolutions toppled an old order and built on its ruins; but egalitarian America, with its traditions of social and economic mobility, spawned less desperate politics than class-ridden Europe.

American nativism has been anti-Catholic and antiradical while fostering a cult of Anglo-Saxonism.

In addition, the very poor were considered dangerous, a potential source of European-style radicalism. The typical economic condition of each new lot of immigrants, therefore, was seen as un-American. The question was raised with each new wave whether their poverty and lifestyle were signs of inherent inability to become American.

The antiradical and anti-Catholic traditions defined what America was not and must not become. A third tradition defined what America was and should be: Anglo-Saxon. "Providence has been pleased to give this one connected country to one united people—a people descended from the same ancestors, speaking the same language, professing the same religion, attached to the same principles of government, very similar in their manners and customs."[13] Although not strictly accurate, *The Federalist* enunciated the Anglo-Saxon tradition.

The first period of US history, then, was marked by substantial immigration and legislative inaction on the federal level but, in addition, by the development of a nativism that would later play so large a part in immigration policy. In this period, manpower needs for America's economic development and expansion overshadowed the antiforeign animus. Figure 1 and the accompanying highlights (pp. 12–13) interpret changes in immigration levels from 1825 to 1975.[14]

The absence of federal legislation, however, does not mean there was no desire to restrict immigration. Opposition to immigrants was expressed during the 1850s in the Know-Nothing movement and in California's anti-Chinese legislation. The Know-Nothing movement was able to form a coalition based on ethnic and religious bias, worker resentment of competition, and Southern fears of Northern population growth and political power. Successful at the polls in the 1850s, the movement faded with the onset of the Civil War.

We must not forget that this era also included continuation of the slave trade. The regional differences on this issue were resolved in a constitutional compromise of 1787. Article I, Section 9 still reads: "The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808 but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person." Although Congress forbade the slave trade after 1808, it continued. Only with Lincoln's Emancipation Proclamation did the slave trade end in the United States.

Individual Minimal Requirements, 1875–1920

In 1876 the Supreme Court ruled that state laws regulating immigration were unconstitutional. The Court held that Congress alone has the power to regulate immigration under Article I, Section 8 of the Constitution, which empowers Congress "to regulate commerce with foreign nations, and among the several states, and with Indian tribes."

Most major immigration acts passed during 1875–1920 sought to exclude the sick, the criminal, and those with unacceptable morals or politics

Following the Court ruling, Congress exercised its constitutional prerogatives by enacting protectionist legislation aimed primarily at individual characteristics of immigrants, but not at restricting total volume. Of the dozen or so major immigration laws passed between 1875 and 1920, about three-quarters were primarily aimed at excluding persons with diseases, criminal records, and unacceptable moral standards or political beliefs.[11] Chronic

Highlights of Events to Interpret Changes in Immigration Levels, 1825-1975

1825-1874

1830s Sharp increase in volume of immigration; beginning of Irish domination of immigrant stream

Late 1840s-early 1850s Heavy Irish and German immigration

1861-65 Civil War. Lull in nativist movements

1872 Major decline in foreign (esp. British) capital investment in US

1875-1920

1875 First federal law excluding criminals and prostitutes from admission

1876 Supreme Court ruling that power to legislate on immigration rests exclusively with Congress

1880s Beginning of "new immigration" (from southern and eastern Europe)

1882 First Chinese exclusion act

1885 First contract labor law

1893-97 Recession

1896 New immigration constituted majority of total immigrants

1900-1914 Peak levels of immigration

1907 Largest single year of immigration: 1,285,349 persons admitted

1914-17 World War I

1917 Literacy test requirement

1921-1964

1921 First quota act (3 percent of foreign born of each nationality as enumerated in 1910 Census)

1924 Second quota act (2 percent of foreign born of each nationality as enumerated in 1890 Census until 1929. After 1929, quota of a country stood in the same relation to 150 000 as inhabitants of US of that ethnic origin to total US inhabitants in 1920 Census, with minimum quota of 100)

1930s Depression

1941-45 World War II

1945-53 Special legislation for postwar admissions of displaced persons and war brides

1952 McCarran-Walter Act

1953 Refugee Relief Act

1958 Hungarian refugees permitted to adjust to immigrant status

1965-Present

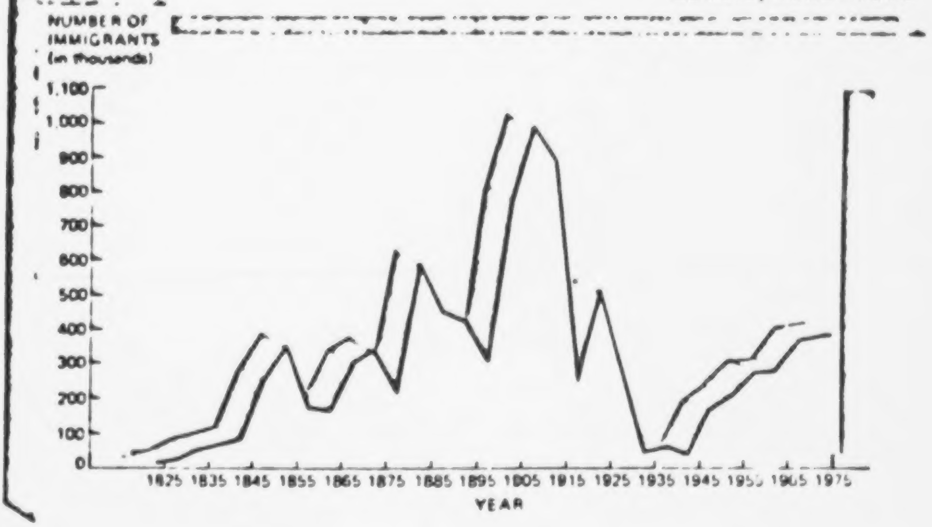
1965-68 Transitional phasing out of quota system

1968 About 100 000 adjustments of status of Cuban refugees before imposition of 120 000 ceiling on Western Hemisphere visa issuance

1969-75 Full provisions of 1965 Immigration Act in force

1978 Worldwide ceiling of 290 000 becomes law

Figure 1
US Immigration Levels, 1825–1975



alcoholics, felons, anarchists, professional beggars, polygamists, prostitutes, and persons with tuberculosis, epilepsy, and mental illnesses or retardation were excluded by law.

The legislation of this period also sought to protect American labor. Organized labor pressed for prohibition of contract laborers, "servile classes" used for strike breaking. At first, labor did not advocate a broad restrictionist policy. "We are not objecting to immigration that is voluntary," declared the president of the Amalgamated Association of Iron and Steel Workers as late as 1892.[16] But, particularly under American Federation of Labor president Samuel Gompers, labor became increasingly restrictionist with the depression of 1893–97.

A would-be immigrant had to prove he was not destitute, yet his job prospects could not include contract labor

The resulting US policy was somewhat contradictory. The would-be immigrant had to demonstrate that he was not a pauper or destitute, but also that he had no job prospects that could be construed as prearranged (i.e., no contract in hand). The immigration laws of 1885 and 1887 prohibited the admission of contract laborers, and the amendment of 1888 authorized the deportation of contract labor law violators if caught within one year of entry. In practice, many immigrants were admitted, since the main thrust of the contract labor prohibition was against organized recruitment, which could undercut US laborers' wages, working conditions, and organizing efforts.

Nativism resurfaced following a lull during the Civil War. The American Protective Association was born in Iowa in 1887, mainly to counter alleged Catholic conspiracies. The Immigration Restriction League developed out of a meeting of five Boston blue bloods in the office of Charles Warren, a noted constitutional historian. The league advocated adoption of a literacy test that would reduce the number and limit the national origins of the "new immigration" from southern and eastern Europe. The literacy test requirement was vetoed by Presidents Cleveland and Taft, but was finally passed over President Wilson's second veto in 1917.

The panoply of scientific racism would be laughable were it not for the immense harm caused in its name

The restrictionist movement increasingly appealed to "scientific racism"—a series of highly questionable assumptions, twistings of Darwin's theory of evolution and its counterpart, the Social Darwinism of Herbert Spencer, and an alchemist's smorgasbord of "measurement" techniques from cephalic indexes to somatic types. The panoply of scientific racism would be laughable today were it not for the immense harm caused in its name in the twentieth century, particularly in Nazi Germany. This framework took hold and served as the conventional wisdom of the day. It provided the foundation for the 42-volume report issued in 1911 by the Joint Commission on Immigration, named after its chairman, Senator William P. Dillingham of Vermont, which purported to demonstrate the inferiority of the immigrant "races" and blamed them for a host of ills. The full impact of the Dillingham Commission was to be felt in the national origins quota system of the 1920s.

Chinese exclusion was extended to Japanese in 1907 by the Gentlemen's Agreement, and to all Asians in 1917

The excludable classes prohibited by the legislation of 1882 included a whole nation, the Chinese. Chinese exclusion, extended by the "Gentlemen's Agreement" of 1907 to Japanese and ultimately in 1917 to all Asians, was clearly not aimed at an individual's qualities, but referred to a whole group. Chinese exclusion seems to have been a labor protection measure, with a heavy dose of racism so intertwined that it is hard to separate the two. Chinese exclusion foreshadowed in both substance and rhetoric the national origins quota policy.

Nevertheless, while the restrictionists were trying to develop a consensus to limit immigration numerically and the mechanisms to reduce or exclude whole groups on "racial" grounds, immigration continued to grow. The volume of immigration (see Figure 1), its changing composition, and the xenophobia accompanying World War I led to the success of the nativist viewpoint.

National Origins Quotas, 1921–1964

The literacy tests instituted in 1917 set the stage for the national origins quota acts of the 1920s. These acts, passed in 1921 and 1924, put a ceiling on total immigration and reserved fixed proportions of visas based on the national origins of the US population, thus favoring northern and western European nations in the visa distribution.

The national origins quota system remained the foundation of US immigration policy until 1965, although there were periodic challenges to the concept. The granting of a small quota to China, a

The national origins quota system developed in the 1920s favored immigrants from northern and western Europe.

wartime ally, in 1943 was an acknowledgment of the diplomatic embarrassment of Asian exclusion. The various special programs and legislation after World War II to accommodate refugees and displaced persons for humanitarian and political stabilization reasons, along with war brides and grooms, made it clear that the quota system was not in fact completely determining the ethnic mix of immigrants.

A congressional review of immigration law begun in 1948 resulted in the McCarran-Walter Act of 1952, the first codification of immigration and nationality law. Passed over President Truman's veto, the Act reaffirmed the quota concept. Although the recently ended war reduced the acceptability of racial inferiority arguments, the concept of assimilability was used to justify favoring natives of countries with cultural and historical ties to the United States. Asian exclusion was dropped, but persons of Asian ancestry were treated differently from others for immigration purposes. For example, a second-generation Brazilian of Japanese ancestry was to be counted against Japan's small quota, whereas a second-generation Brazilian of Italian ancestry was treated as a Brazilian, not an Italian.

The McCarran-Walter Act also included a preference system for distributing visas within each country's quota allotment. Although seldom used by immigrants from large-quota countries, the preference system reserved half the visas for use by workers and their dependents, while other preferences were assigned to family members of citizens and of permanent resident aliens. Table 1 illustrates the preference system of the McCarran-Walter Act.

Passage of a new quota system, however, did not mark the end of the tradition of accepting immigrants. President Truman proclaimed that aspect of American tradition in his veto message:

Table 1
Preference System of the Immigration and Nationality Act of 1952

1. First preference: Highly skilled immigrants whose services are urgently needed in the United States, and the spouse and children of such immigrants.
   60 percent plus any not required for second and third preferences.
2. Second preference: Parents of citizens over the age of 21, and unmarried sons and daughters of US citizens.
   30 percent plus any not required for first and third preferences.
3. Third preference: Spouse and unmarried sons and daughters of an alien lawfully admitted for permanent residence.
   20 percent plus any not required for first or second preference.
4. Fourth preference: Brothers, sisters, and married sons and daughters of US citizens, and any accompanying spouse and children.
   50 percent of numbers not required for first three preferences.
5. Nonpreference: Applicants not entitled to one of the above preferences.
   50 percent of numbers not required for first three preferences, plus any not required for fourth.

Source: Department of State, Bureau of Security and Consular Affairs, *Report of the Visa Office* (Washington, D.C.: US Government Printing Office, 1968), p. 68.

"[The] quota system—always based upon assumptions at variance with our American ideals—is long since out of date. . . . The greatest vice of the present system, however, is that it discriminates, deliberately and intentionally, against many of the peoples of the world. . . .

The idea behind this policy was, to put it boldly, that Americans with English or Irish names were better people and better citizens than Americans with Italian or Greek or Polish names. . . . Such a concept is utterly unworthy of our traditions and our ideals. It violates the great political doctrine of the Declaration of Independence that 'all men are created equal.' . . .

It repudiates our basic religious concepts, our belief in the brotherhood of man. . . .

It is incredible to me that, in this year of 1952, we should again be enacting into law such a slur on the patriotism, the capacity, and the decency of a large part of our citizenry."[17]

The aims of the nativists were partially achieved during this period. Figure 1 clearly indicates the overall decline in immigration. To be sure, the Depression and World War II were at least as responsible as the ceiling placed on immigrant visas; however, limitations on immigration became almost universally accepted. There has been no serious proposal to return to a policy of unlimited entry controlled only by requiring minimal health and moral standards that characterized the period of 1875–1920. In that sense, US policy could be labeled "restrictionist"; yet in terms of overall admissions and subsequent opportunity for citizenship, American policy continues to be very generous in comparison with other countries.

Although the McCarran-Walter Act reaffirmed the quota system, exceptions to the racial and nationality criteria were often made to admit refugees and displaced persons

The nativists' aim to reduce the number of undesirable aliens on racial or nationality criteria was less successful. Because of the admission of refugees and displaced persons, the national origins composition of post-World War II immigrants did not conform to the national origins quotas. Although the quota policy was reaffirmed by the McCarran-Walter Act, refugee resettlement—and therefore deviations from the policy—persisted as World War II refugee resettlement continued during the 1950s, augmented by the Hungarian refugee movement later in the decade.

Family Reunion and Labor Needs, 1965-Present

After 1952 presidential platforms of both parties called for immigration reform. President Eisenhower echoed Truman's call for a revision of immigration law, especially the quota system, in his 1953 State of the Union Message. Indeed, he sent a special message on immigration reform or mentioned it in his State of the Union Message to every Congress (83rd to 86th) that sat during his two terms as President. President Kennedy also made a major effort to reform immigration. The result of hearings on the bill prepared by the Kennedy Administration was a much-altered set of immigration amendments signed into law by President Johnson in 1965. These amendments to the McCarran-Walter Act immediately ended the Asian discrimination provisions and mandated a phasing out of the national origins quota system by 1968. The bill also contained a new preference system for the distribution of visas.

The Immigration Act of 1965 also introduced two innovations: (1) a ceiling was put on visas for immigration from the Western Hemisphere, and (2) all nonrelative and nonrefugee immigrants were required to obtain a labor clearance certifying that American workers were not available for their jobs and that the immigrants would not lower prevailing wages and working conditions.

The basic policy as of 1 July 1968 specified that 120,000 visas could be granted to persons born in the Western Hemisphere and 170,000 to persons born in all other countries. The 170,000 visas for the Eastern Hemisphere were to be distributed according to seven preferences, as illustrated in Table 2, but natives of no single country were to receive more than 20,000 visas annually. Those who received a worker preference (third or sixth preference) and nonpreference immigrants needed a labor certification before receiving a visa. For Western Hemisphere immigrants, on the other hand, there was no preference system and no country limit of 20,000 visas; however, a labor certification was required for all visa applicants except immediate family members of US citizens and permanent resident aliens. In 1976, the law was changed so that the Western Hemisphere provisions conformed to the Eastern Hemisphere selection system. The only difference in the parallel but separate systems was that the overall ceiling on annual visa allotments was kept at 120,000 for the Western Hemisphere and 170,000 for the rest of the world.

In October 1978, President Carter signed into law a worldwide ceiling bill. This bill combined the two ceilings into a single, worldwide ceiling of 290,000 visas to be distributed annually, with no change in the preference system and other procedures. Table 3 presents a synopsis of the 1952 McCarran-Walter Act—the basic immigration code—(pp 22-23) and additional amendments contained in the Acts of 1965, 1976, and 1978. The effect of each of these steps in the development of a worldwide policy has been a trend toward a larger proportion of immigrants from southern Europe, Asia, and Latin America. These changes in law, and the even greater changes in regulations for implementing the law, have resulted in an extremely complicated application process. One result is growing dissatisfaction with a system that, in substance and especially in operation, favors the educated and wealthy, who can maneuver themselves or hire guides to take them through the bureaucratic jungle and into the United States.

As of 1978, a worldwide ceiling permits 290,000 visas to be distributed annually, and those seeking a work preference also require labor certification.

Table 2 Preference System of the Immigration Act of 1965

1. First preference: Unmarried sons and daughters of US citizens.
   Not more than 20 percent
2. Second preference: Spouse and unmarried sons and daughters of an alien lawfully admitted for permanent residence.
   20 percent plus any not required for first preference.
3. Third preference: Members of the professions and scientists and artists of exceptional ability.
   Not more than 10 percent.
4. Fourth preference: Married sons and daughters of US citizens.
   10 percent plus any not required for first three preferences.
5. Fifth preference: Brothers and sisters of US citizens.*
   24 percent plus any not required for first four preferences.
6. Sixth preference: Skilled and unskilled workers in occupations for which labor is in short supply in the United States.
   Not more than 10 percent.
7. Seventh preference: Refugees to whom conditional entry or adjustment of status may be granted.
   Not more than 6 percent.
8. Nonpreference: Any applicant not entitled to one of the above preferences.
   Any numbers not required for preference applicants.

*Amended in 1976 to require US citizens conferring benefit to be over 21 years of age.

Source: See Table 1.

Table 3
Major Provisions of Recent US Immigration Acts

Provisions	1952	1965[1]	1976	1978
Ceilings				
EH	158.561	170.000	170.000	None
WH	None	120.000	120.000	None
Total	158.561 plus	290 000	290 000	290.000
Exempt from Ceilings				
EH	Spouse and children of adult US citizens	Parents spouse and children of adult US citizens	Parents spouse and children of adult US citizens	Parents spouse and children of adult US citizens
WH	No ceiling	Parents spouse and children of adult US citizens	Parents spouse and children of adult US citizens	Parents spouse and children of adult US citizens
Country Quotas or Ceilings				
EH	Proportionate to 1920 US ethnic composition	20 000	20 000	20 000
WH	None	None	20 000	20 000
Preference System[2]				
EH	4 preferences	7 preferences	7 preferences[3]	7 preferences[3]
WH	None	None	7 preferences[3]	7 preferences[3]

Provisions	1952	1965[c]	1976	1978
Labor Certification				
EH	By complaint[b]	3rd 6th nonpreference	3rd 6th nonpreference	3rd 6th nonpreference
WH	By complaint[b]	All except immediate family of citizens and of permanent resident aliens	3rd 6th nonpreference	3rd 6th nonpreference

EH = Eastern Hemisphere WH = Western Hemisphere

[a] See Tables 1 and 2. The percentages apply to the country ceilings in the 1952 Act, to hemisphere ceiling in 1965 and 1976, and the worldwide ceiling of 1976.

[b] No prior certification prescribed in 1952 Act. A complaint had to be lodged or an employer had to petition for 25 or more applicants before a Department of Labor review was initiated.

[c] Provisions listed refer to system as of 1968, after elimination of quota system of 1952 Act and imposition of Western Hemisphere ceiling.

[d] The 1976 Act provided that if a country met the 20,000 ceiling in any year, for the next year the preference proportions would apply to the 20,000 ceiling rather than the hemispheric or worldwide ceilings. This is to ensure that lower-preference and nonpreference applicants do not get squeezed out because of demands in the higher preferences. This provision is invoked in only a few countries where third preference demand is especially high.

Nevertheless, the 1965 Act and its successors have swung the pendulum away from nativism. The quota concept and its pseudo-intellectual baggage, scientific racism, were repudiated. Current law focuses on family reunion, acceptance of a fair share of refugees, and labor protection balanced against admitting persons with needed skills. Whether the law actually achieves these goals and whether, indeed, these goals are outdated are subjects of contention. But the 1965 Act continued the protectionist theme by initiating numerical ceilings on visa issuance to the Western Hemisphere.

Current Contexts of Immigration Policy

The historical tension between the two immigration themes—protection and acceptance—is still evident. Those who wish to move to a more restrictive policy point to changes in the economy, resource base, and population—both in the United States and worldwide—that require changed goals for immigration, although there is no general agreement on what should be the paramount consideration in immigration policy. Some see the size and composition of the population as the major consideration. Others see employment requirements as the top priority in developing any new policy.

The historical tension between protection and acceptance is still evident

On the other hand, there are those who do not want more restrictive policies but at the same time believe that current policy, and particularly its administration, need revision. They also accept the fact that current national and international conditions call for a reexamination of immigration. They perceive the need to evaluate the population and labor force effects of immigration. They accept the general goals and policy framework of current immigration law but emphasize the need to perfect the mechanisms of distributing visas equitably, though in the national interest and without contributing to unsanctioned immigration.

Both sides call for review of immigration policy and law in light of new conditions and new interpretations of the role of immigration in population growth, the employment needs of a postindustrial economy, world refugee movements, brain drain, illegal migration, and so on. Despite the persistence of the two themes regarding immigration, there is no neat lineup of camps on specific issues. A position on one current immigration issue does not necessarily predict policy preference on others.

The major topic of policy discussion is the demographic, socioeconomic, and foreign policy impacts of illegal migration

What, then, are the major issues under discussion? The main topic is undoubtedly illegal migration. Illegal migration has existed as long as there has been legislation regulating immigrant flows, but the current issue is the size of recent flows, the potential for greater flows, and the demographic, socioeconomic, and foreign policy impact of illegal migrants.

Strong "limits-to-growth" advocates pose questions about the effects of illegal and legal migration on current and future population growth. The time has come, according to these advocates, when immigration should make no net addition to the U.S. population, since the world is running out of land and natural resources.

Others see legal and illegal migration as an economic problem for the United States. They desire a closer interaction between immigration and employment policies. Questions about the possibility and desirability of continued economic expansion lead to concerns about competition and the impact of international migration on the conditions of U.S. workers and the civil rights of minorities. If the United States moves to a slow-growth or no-growth economy, to what degree can the country absorb additions to the current and future labor force?

This concern with labor force impact is reinforced by a change in the geographic origin of immigrants. For most of U.S. history, the main source of immigrants and the focus of policy has been Europe. But some restrictionists did note the threat of the "back door," Latin America, and opposed exclusion of the Western Hemisphere countries from the quota system.[18] Indeed, the concern of some senators, notably Sam J. Ervin, Jr., James O. Eastland, Everett M. Dirksen, and Roman L. Hruska,[19] led to the first numerical ceiling on Western Hemisphere visas in 1965. Despite the ceiling, Latin American and Caribbean immigration, which was about 15 percent of total immigration between 1930 and 1960, constituted 41 percent between 1971 and 1974. The focus is now on the back door.

The populations of many Latin American countries have large proportions of young people. Even if high fertility and growth rates decline, substantial numbers of people already born will have little prospect for integration into their own labor force, even with the most optimistic of development forecasts. From a purely demographic viewpoint, the potential for immigration, legal and illegal, is great.

There is, in addition, concern over bilingual militancy among growing Spanish-origin groups. Parallels are drawn with French Canadian militancy, although Spanish-origin groups represent a variety of cultures and are widely dispersed in the United States. Language maintenance and use will continue to sharply focus the issue of pluralism.

The case of Mexico points up an additional context of current policy discussion: the foreign policy dimensions of immigration policy. The actual and potential links among migration, development, job creation, trade access, and Mexican oil and gas are clear. The issues of temporary labor transfers and economic development in many regions of the world dictate greater attention to the international effects of immigration policy.

Finally, there is the problem of developing coordinated international policy and action in regard to refugees. From the U.S. viewpoint, this requires a mechanism for accepting refugees that is flexible and permits congressional monitoring of refugee movements within an overall immigration policy. At the same time, the U.S. government has expressed the hope that other countries will show greater willingness to resettle refugees.

In sum, seven issues define the major areas for current immigration policy debate: illegal migration; population growth; the needs and absorptive capacity of the U.S. labor force; the new geographic focus on immigration from Latin America and the Caribbean; the development of pluralism in the United States, especially in regard to the size and spreading influence of Spanish-origin groups and the substantive and symbolic importance of language maintenance; foreign relations on a bilateral and a multilateral level; and negotiating an international refugee resettlement policy and US administrative mechanisms for admitting refugees. A number of technical questions, including legislative language and administrative organization, are not discussed in this paper, not because they are unimportant—that is hardly the case—but because our focus is the broader policy choices involved in immigration and naturalization law.

The aforementioned immigration issues will probably be the main policy topics under discussion in the near future, particularly in the forum of the Select Commission on Immigration and Refugee Policy. Numerous interested parties will have access to the Commission as it reviews and develops recommendations for immigration legislation. Organized labor, voluntary refugee and immigrant aid agencies, ethnic organizations, population and environmental groups, and other private sector organizations will doubtless express their views on immigration issues. In addition, the Departments of State, Justice, and Labor have legislatively mandated roles in administering US immigration law. Each of these departments has its own views and interests concerning the shape of immigration policy and the regulations used to administer the laws. Ultimately, legislative recommendations must be reviewed by the appropriate committees of Congress, and legislation must be approved by Congress and the President. In short, there will be many actors with divergent interests and many forums for activity before major changes in immigration legislation become a reality.

Limits-to-growth concerns, ethnic-group relations, and US foreign policy in the hemisphere are major policy issues

Dr. KEELY. Thank you very much, Mr. Chairman.

Senator SIMPSON. Thank you very much, Dr. Keely.

Mr. North, we now have a rollcall vote here in this chamber. Because I very much want to be here to hear your testimony, rather than have you proceed, I am going to recess. It will take me just 5 minutes to vote. When Chairman Mazzoli, who will be here in a very few minutes, returns, he will proceed again with the hearing. I will return in 5 to 10 minutes.

[A brief recess was taken.]

Representative MAZZOLI. The committee will come to order. Senator Simpson had to leave for a vote and I would like to continue our deliberations until he can return, because then I will have to leave very shortly for a vote on our floor. This is a decidedly unhappy way to make a testimonial record, but that is the way we have to operate.

I understand that Mr. North is the next person to go. Please.

STATEMENT OF DAVID NORTH, VICE PRESIDENT, NEW TRANSCENTURY FOUNDATION

Mr. NORTH. Thank you, Mr. Chairman. I am David North. I am director of the Center for Labor and Migration Studies of the New TransCentury Foundation here in Washington. I have been engaged in immigration research for the last dozen years and I am speaking for myself.

Like the other witnesses, I have been asked to comment on the report of the Select Commission. I have focused my remarks on two areas in which I have some particular knowledge: The enforcement of the immigration law and the utility or the lack of it of a substantial alien worker program. But first let me make a few general observations about the Select Commission and its report.

I had more than an adequate opportunity to watch the Commission staff in action. I testified before the Senator in his role as chairman of one of the hearings in Denver. And I have had some opportunity to review the report.

The report of the Commission appropriately advocates a package rather than a piecemeal approach to the Nation's immigration policy. It calls for a stricter enforcement of the immigration law as it stands, and legalization or amnesty for an undefined segment of the current undocumented population. So far so good.

The Commission, however, as Charles Keely and Dr. Bouvier have already pointed out, and Michael Teitelbaum will shortly, did not really face up to the demographic consequences of its recommendations. It also made no real effort to add to our knowledge of illegal migration to this country. For those reasons I give the Commission mixed marks.

Let me talk about the two specifics. There are many good reasons, which others have talked about, for the enforcement of the immigration law. I will not talk in policy terms, as most of my colleagues have done, and I will talk in terms of mechanics.

Let me just outline for you briefly the four points that I made in a report that we did for the Select Commission. First, migration, legal and illegal, has increased substantially in the 1970's. We have lots of data on that, and it has gone up uniformly, no matter which index one examines.

Second, resources to control migration have increased much less rapidly than migration itself. Let me give you a couple of specifics. In the issuance of nonimmigrant visas, the number of minutes spent, and that is minutes by U.S. citizen staff per visa decision, dropped from 5.6 minutes in 1973 to a projected 4.5 minutes in 1980.

Another number: While in 1970 it took INS officers who were engaged in enforcement activities 12.3 hours to accomplish an apprehension of an illegal migrant, the average had fallen to 5.1 hours in 1978, presumably reflecting a larger flow and probably a larger stock of such migrants. It might reflect the possibility that the border patrol is 2½ times as capable as it was 8 years earlier. I doubt it. It might reflect the fact that the illegal or undocumented migrants are two and a half times as clumsy as they were 8 years before. I doubt that as well. I think it reflects the larger flow of people.

I also make the point that funding for additional enforcement could be secured from migration user fees, rather than from the Treasury. User fees are routinely charged to citizens and permanent resident aliens seeking benefits from INS. Typically, nonimmigrants—that is aliens coming here, legally and temporarily—deportable aliens, and persons passing through the ports of entry, be they citizens or aliens, none of those people are paying any fees. Many of us who have done some traveling abroad routinely pay fees as we go in and out of airports.

My suggestion is that if we started putting up some turnstiles at our borders, charging people who walk say a quarter and people who drive cars $1 or so, partially to discourage people from driving cars—we have enough of that—we project, and I won't give you all the numbers, that an admission fee at the ports of entry would raise $194 million, which is almost half of what we spend now on immigration law enforcement. The issuance of nonimmigrant visas, about 8 million a year, if we charged them $5 apiece, that would raise $40 million.

I am suggesting that there is a lack of resources for the Immigration Service and for the Visa Service of the State Department and some part of that gap could be taken care of by these user fees.

If more vigorous immigration law enforcement is desired, and it is a very real question whether it is, a wide variety of options, some never tried, are available. The Commission looked at some of them. I would like to raise three.

Employer sanctions is something that the Commission looked at and has been discussed very thoroughly, and I am not going to get into that right now. That is an option for a new system, as opposed to spending some more money and more energy on the older system.

Another new system would be to require a nonrefundable airline ticket for all arriving nonimmigrants. This suggestion, which I spell out more thoroughly in enforcing the immigration law; a review of the options, which I am about to file with the committee, would never discourage legitimate tourists who need to go back home anyway, but it would save INS millions in funds now spent for airline tickets for expelled aliens. People typically come here on a one-way ticket. Those who are arrested for being here illegally are typically sent home at Government expense. I am simply suggesting that that expense be borne by the alien himself. By not letting people into the country without a nonrefundable round-trip ticket we would save the INS something like $7 million a year which is now spent on an item called "alien travel."

Finally, I would like to call to your attention the California program for denying welfare benefits to deportable aliens. It is not well known or used outside that State. The program works smoothly. It works with food stamps, AFDC, and similar programs. There is little or no controversy. It is a very simple technique, and the county of Los Angeles alone, one county, not the State, just the county of Los Angeles alone, estimates that it saves something on the order of $50 million a year in welfare costs by its process of sorting illegal aliens off the welfare rolls.

Representative **Mazzoli**. I am sorry, Mr. North. The time has expired. I apologize, but we will be getting into some of those issues in the questions that will occur.

[The prepared statement of Mr. North follows:]

PREPARED STATEMENT OF DAVID S. NORTH

Good afternoon. My name is David S. North, and I am director of the Center for Labor and Migration Studies of the New TransCentury Foundation, Washington, D.C. I have been engaged in immigration research for the last dozen years, and before that had served as staff director of the Inter-Agency Committee on Mexican-American Affairs, the first U.S. government agency created to reach out to the Hispanic Community. I also was assistant for farm labor to the then U.S. Secretary of Labor, Willard Wirtz.

Like the other witnesses, I have been asked to comment on the report of the Select Commission on Immigration and Refugee Policy. I have had the opportunity to review the very useful draft testimony of Michael Teitlebaum, and have shaped my testimony to avoid duplicating his. With that in mind I have focused my remarks on two areas in which I have special knowledge: the enforcement of the immigration law, and the utility, or lack of it, of a substantial temporary alien worker program, the prospect of which apparently intrigues the President.

But before I address those two specific subjects, let me make a few general observations about the Select Commission and its report. I had more than an adequate opportunity to watch the Commission's staff in action, participated in innumerable staff consultations, and wrote on the subject of enforcement for the Commission.

The report of the Commission, appropriately, advocates a package -- rather than a piece-meal approach to the nation's immigration policy. It seeks to merge our *de facto* and *de jure* immigration policies. (By that I mean it calls for an end of our *de facto* tolerance of substantial levels of illegal immigration.) It calls for stricter enforcement of the immigration law, and amnesty for an undefined segment of the current undocumented population. So far, so good. The Commission, however, as Dr. Teitlebaum eloquently has pointed out, did not really face up to the demographic consequences of its recommendations -- to the point of not adding up the prospective admissions that would result from its policies. It also made no real effort to add to our knowledge on illegal migration to the country. For these reasons I give the Commission mixed marks for its work.

On my first point, the enforcement of the immigration law, let me briefly summarize for you the work that I did for the Commission, the full text of which I have supplied to the Committees. The report's four most significant findings, taken from the Executive Summary, are:

1. Migration, legal and illegal, has increased substantially in the 1970s.

Statistical measures of recorded legal migration doubled between 1970 and 1978, and those of illegal migration more than doubled. Two key measures of illegal migration, denials of entry and apprehensions (of deportable aliens) were running at more than 300% of the 1970 levels in 1978. (See Table 1.)

TABLE 1

Indices of Migration to the United States, Legal and Illegal, 1970 and 1978
(ranked in descending order by 1978 percent)

MIGRATION INDEX	1970	1978	1978 AS PERCENT OF 1970
1. Denials of Entry (Illegal)	256,379	861,295	336.0
2. Apprehensions (Illegal)	325,188	1,028,706[a]	316.3
3. Aliens Expelled (Illegal)	320,241	1,003,586	313.5
4. Nonimmigrant Visas Refused (Illegal) . . .	194,943	475,302	243.8
5. INS Apprehension Effectiveness (based on officer hours per apprehension)(Illegal) . .	12.1 (index 100)	5.1 (index 236.5)	236.5
6. Nonimmigrant Visas Granted (Legal)	2,148,901	4,731,851	220.2
7. Nonimmigrant Admissions (Legal)	4,431,880	9,343,710	210.8
8. Immigrant Admissions (Legal)	373,326	601,442	161.1
(a) Outside Numerical Limits	86,043	341,104	(394.4)
(b) Inside Numerical Limits	287,283	260,338	(90.6)
9. Entries of Aliens (Legal)	126,478,119	154,939,348	122.5

[a] Silva case "apprehensions" are included in this number. Were the 38,617 cases omitted, it would reduce apprehensions to 990,089, or 304.5% of the 1970 level.

Sources for Table 1, by Line Item:

Line	Source
1	INS Form G-23.2 (This figure is a partial estimate)
2	INS Form G-23.17 (for Border Patrol) and G-23.20 (for Investigations)
3	INS Annual Report, 1978, Table 6
4	Report of the Visa Office, Table XXII
5	INS Form G-23.17, G-23.15 (Border Patrol) and G-23.20, G-23.21 (Investigations)
6	Report of the Visa Office, Table XVIII
7	INS Annual Report, 1970, Table 16 and INS Yearbook, 1978 (forthcoming) Table 16
8 a & b	INS Annual Report, 1970, Table 4 and INS Yearbook, 1978 (forthcoming) Table 4
9	INS Annual Report, 1970, Table 19 and INS Yearbook, 1978 (forthcoming) Table 19

TABLE 2

Indices of Resources Available to Enforce the United States Immigration Law, 1970 and 1978

(in constant terms)

Resources of the Immigration and Naturalization Service	1970	1978	index (1970 compared to 1978)
Total expenditures (in 1970 $$)	$105,673,000	159,978,000	151.4
Authorized positions	6,920	10,071	145.5
Enforcement hours	3,641,445	4,781,201	131.3

Note: total expenditures and authorized positions cover both enforcement and nonenforcement activities; comparable data for 1970 and 1978 are not available for the two categories of expenditures. Expenditures for enforcement-related hardware (sensor systems, counterfeit-resistent alien registration cards, and the three INS helicopters) have increased more rapidly than expenditures on enforcement personnel.

Sources: Lines 1 and 2, U.S. Department of Justice, Immigration and Naturalization Service, FY 81 Budget Request to Congress, January 1980. Line 3, unpublished data from INS forms G-23.15 and G-23.17 (for Border Patrol) and G-23.20 and G-23.21 (for Investigations).

2. Resources to control migration have increased much less rapidly than migration itself.

Resources available to enforce the immigration law have risen less rapidly than migration in the 1970s, and when compared with some workload data have actually declined over the decade. Measures of INS resources in 1978 were at 131-151% of those of 1970. (1970-1978 resource comparisons are not available for the visa issuance function of the State Department, but personnel increases since 1973 have been exceeded by workload increases.) Comparing resources with standard workload measures, we find for example:

- In the issuance of nonimmigrant visas, the number of minutes spent by U.S. citizen staff per visa decision dropped from 5.6 in 1973 to a projected 4.5 in 1980.
- While in 1970 it took INS officers 12.3 hours to accomplish an apprehension of an illegal migrant, the average had fallen to 5.1 hours in 1978, presumably reflecting a larger flow and probably a larger stock of such migrants. (See Table 1.)

The total U.S. investment in immigration law enforcement in 1980 we estimate at $380,000,000 or 0.53% of the Federal budget.

3. Funding for additional enforcement could be secured from migration user fees, rather than from the Treasury.

User fees are routinely charged to citizens and permanent resident aliens seeking benefits from INS; typically nonimmigrants, deportable aliens, and persons passing through the ports of entry do not pay fees. The report proposes the consideration of four new user fees, as follows:

Activity	Projected Annual Income
Admission at ports of entry (fees to vary from 25¢ to $5)	$194,000,000
Issuance of nonimmigrant visas (@ $5)	40,000,000
Issuance of border crossing cards (fees to vary)	3,000,000
Issuance of INS admissions documents (I-20) to educational institutions (@ $10)	2,000,000
TOTAL	$239,000,000

The report also covers possible savings to the Treasury which could be secured, directly and indirectly, from more vigorous enforcement of the immigration law. The Congressional Budget Office, for example, has estimated that the loss of one million jobs to legal U.S. residents creates a Treasury cost (through expanded income transfer payments) of about $7,000,000,000. In short, the fiscal costs of additional immigration law enforcement may be viewed as more of an investment than an expenditure.

4. If more vigorous immigration law enforcement is desired, a wide variety of options, some never tried, are available.

International migration and its control are complex processes, and there are a number of potential intervention points, shown as boxes in Chart 1, and listed below:

- Stateside monitoring of institutions causing the issuance of nonimmigrant visas for foreign students and exchange visitors. (See box 1 in Chart 1.)

- Stateside decision-making by INS on petitions filed on behalf of would-be immigrants and nonimmigrants. (Boxes 2 and 3.)
- The overseas visa issuance process. (Boxes 6, 7, and 8.)
- The admissions process at the ports of entry. (Box 10.)
- Controlling the border between ports of entry. (Box 9.)
- Interior enforcement of the immigration law by INS officials. (Box 11.)
- Enforcement measures in the labor market (either under existing laws, e.g., the Fair Labor Standards Act, or under new ones, e.g., employer sanction programs). (Box 12.)
- Enforcement measures in the field of income transfer programs (Aid to Families with Dependent Children, Unemployment Insurance, Food Stamps etc.). (Box 13.)

Lesser intervention points are the naturalization process (Box 4) and the issuance of passports to U.S. citizens (Box 5).

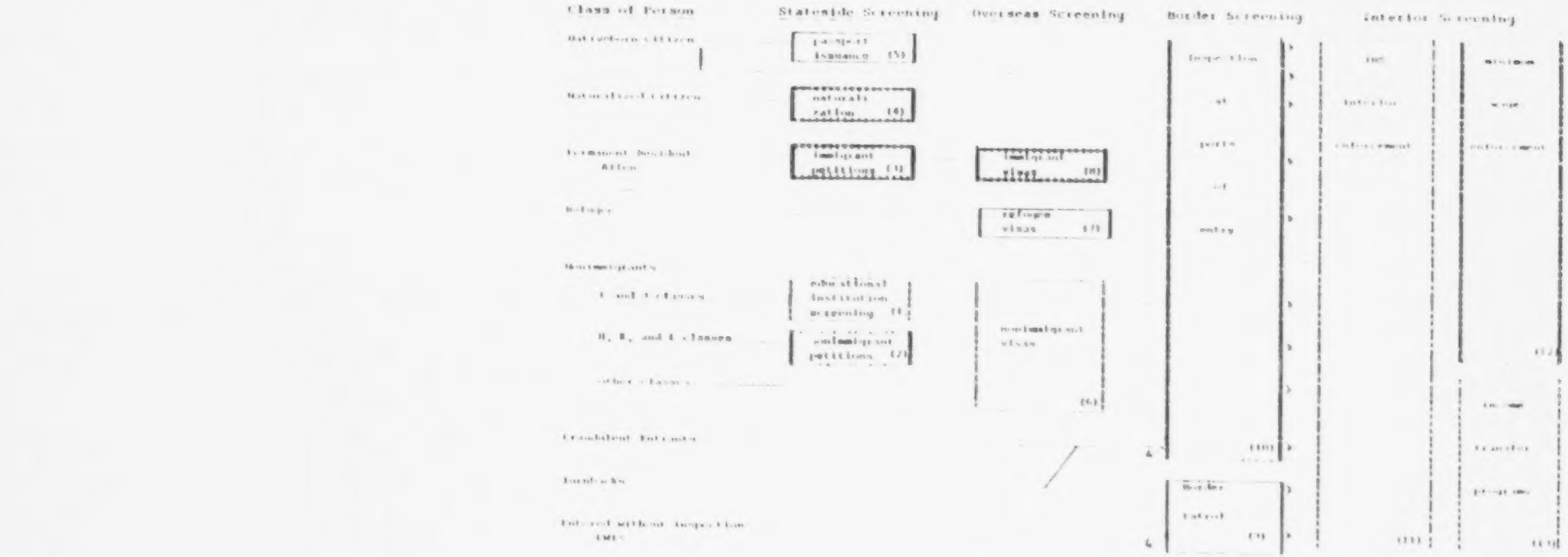
Each of these intervention points is described in the text. The three most interesting proposals in this field are employer sanctions (making it illegal for an employer to hire a deportable alien); the imposition of a nonrefundable return airline ticket requirement on certain classes of nonimmigrants (notably those in the tourist (B-2) and foreign student (F-1) classes); and the expansion of a program now underway in California to deny welfare benefits to deportable aliens.

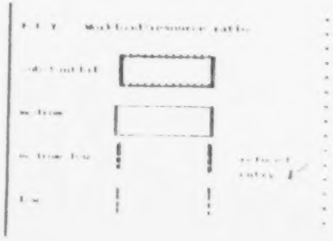
- Employer sanctions could be implemented through a variety of different mechanisms, such as requiring legal U.S. residents to obtain a counterfeit-resistant work permit before obtaining either a new job or an Unemployment Insurance check. Such a program would take time to be implemented; in the first year of operation it would require the issuance of 40,000,000 permits (to job changers and new workers). It could be made self-supporting with a $9 or $10 fee for each permit issued.
- Requiring a nonrefundable airline ticket, we argue, would not discourage legitimate tourists, but it would save INS millions in funds now spent for airline tickets for expelled aliens. Further, it might discourage some potential visa abusers (by increasing the cost of the trip to the United States).
- California's program for denying welfare benefits to deportable aliens is not well known, or used outside that state. The program works smoothly, with little or no controversy or administrative costs, and yet, in the County of Los Angeles alone, we estimate that it saves $58,000,000 a year in welfare costs.

These then are at least some of the factors to be considered when we talk broadly about a stricter enforcement of the immigration laws. There are other serious and substantial costs to such a policy, non-monetary costs, and these are subjects touched upon, I am sure, by other witnesses.

CHART I

THE MIGRATION PROCESS: Potential Law Enforcement Intervention Points


Class of Person
Stateside Screening
Overseas Screening
Border Screening
Interior Screening
Native-born citizen
Naturalized citizen
Permanent Resident Alien
Refugee
Nonimmigrants
F and J classes
H, K, and L classes
other classes
Fraudulent Entrants
Landwalks
Entered without inspection EWIs
passport issuance (5)
naturalization (4)
immigrant petitions (3)
educational institution screening (1)
nonimmigrant petitions (2)
immigrant visas (8)
refugee visas (7)
nonimmigrant visas (6)
inspection at ports of entry (10)
border patrol (9)
INS interior enforcement (11)
minimum wage enforcement (12)
income transfer programs (13)


KEY Workload/resource ratio
substantial
medium
medium low
low
refused entry

N O T E: The purpose of this graphic is to show that there are numerous potential intervention points within the migration process, that some of these points touch only some classes of persons while others (border screening and INS interior enforcement) potentially cover all classes, and that some of the intervention points are better funded (and hence more secure) than others. Generally the boxes with heavier lines have a higher resource-workload ratio, in the eyes of the author, than those with lighter lines. See the text for definitions of the classes of persons, and for descriptions of the processes. Boxes 2,3,4,7,9,10 and 11 are Justice Department functions; 5,6, and 8 belong to the State Department, 12 to the Labor Department, 13 to various HHS and Labor funded agencies, and 1 to institutions [illegible] the International Communication Agency.

Let me now turn to my second subject of special concern, the prospect of a substantially expanded temporary foreign worker program. I am somewhat disturbed by the attention that this subject has received of late. I am worried because the experiences that the U.S. has had in this field, particularly with the long-dead bracero program, and the experiences that Western Europe has had with their somewhat less exploitive guestworker programs, have been almost universally grim. One would hope that we could learn from our own mistakes, as well as from the lessons of the other industrial democracies.

Briefly, as Philip Martin, Mark Miller, and other researchers have pointed out, temporary foreign worker programs are difficult to design and even more difficult to administer. They rarely turn out the way their planners anticipate. Many of the aliens who came to Western Europe as a result of temporary foreign worker programs turned out to be neither temporary nor workers (being members of the worker's families). This was a development that disturbed the governments of those nations, most of which do not regard themselves, as we do, as a nation of immigration.

As for the U.S. experience with the generation-long bracero program, which brought hundreds of thousands of Mexican nationals to work for U.S. agribusiness, the Congress should turn to the real expert in the field, Dr. Ernesto Galarza, who studied the program with great care (while it was occurring) and who wrote eloquently on the subject in Merchants of Labor and elsewhere. His findings were, to over-simplify, that the braceros were workers with only the most limited of rights, that they did America's dirty work for low wages, and that they depressed wages and working conditions for other farm workers. The presence of braceros tended to delay mechanization of the harvest of cotton and cannery tomatoes, and to prevent the unionization of farm workers.

Just as our history (and Europe's) suggest some of the dangers of major foreign worker programs, our unemployment statistics suggest a lack of need for such programs. Why bring in additional workers with about eight million Americans unemployed? What we should do instead is to make the necessary labor market adjustments so that any jobs that need to be filled can be filled from within the U.S. labor force. Those adjustments may sometimes be awkward for a small minority of U.S. employers, but they should be made.

Let me close by saying a few words about our current temporary worker program that brings low-skilled workers to the U.S. to work in temporary jobs both in and out of agriculture. This is the H-2 program, so named for the provision within the Immigration and Nationality Act which makes it possible. It is a program administered jointly by the U.S. Department of Labor, and by the Immigration and Naturalization Service of the Department of Justice. It is not a good program. If we must admit more temporary foreign workers, which I do not think necessary, then we should examine the current H-2 program as a model of how not to proceed.

Fortunately, the H-2 program is currently small, involving no more than 30,000 alien admissions annually. About half the admissions are scattered in various non-agricultural activities. The segment of the program that worries me the most is that which provides most of the workers for several small segments of U.S. agriculture, notably the sugar cane industry of Florida (but not Louisiana or Texas or Hawaii, states that harvest sugar cane without using H-2 aliens) and for the apple industry along the East Coast.

The fundamental problem with this program is that it bonds the worker to a specific employer. If the worker displeases the employer, he gets fired, fair enough; but if he gets fired he also loses his access to the U.S. labor market, because the employer can (and does) enlist INS to deport that worker. Further, the Caribbean worker who really displeases his sugar cane employer not only gets fired and deported, he is blacklisted as well, and never can come to the U.S. again to perform farmwork as an H-2. These are remarkable powers -- and it is as if a member of Congress could fire a staff member, and cause the staff member to be placed on the next plane to Little Rock (for example) and see to it that the staffer was never hired on Capitol Hill again. Think how docile the staff would be! Think why H-2 employers are so fond of this program! Don't design a program anything like that if you want some semblance of fair play in the labor market.

In conclusion, I would like to link my last few remarks more closely to the recommendations of the Select Commission. The Commission did call for tighter enforcement of the immigration law, and I have noted some of the ways that this could be achieved. The Commission, by a 14-2 vote, recommended against a major expansion of a temporary foreign worker program, and I have provided some data and some arguments to support that position.

Finally, let me congratulate the two Committees for holding joint sessions; these are unusual on Capitol Hill and, I believe, unprecedented in the immigration policy field. Perhaps this procedural initiative is symptomatic of substantive initiatives to come.

Representative **Mazzoli**. Mr. Teitelbaum.

STATEMENT OF DR. MICHAEL TEITELBAUM, PROGRAM OFFICER, FORD FOUNDATION

Dr. **Teitelbaum**. Thank you, Mr. Chairman. My name is Michael Teitelbaum. I am at present a program officer at the Ford Foundation, and I previously was Staff Director of the House Select Committee on Population. I am appearing before you at your request and in my personal capacity. I would like to first associate myself with others on previous days and today who have complimented you and your staff for the depth and balance of these hearings.

Representative **Mazzoli**. Thank you very much.

Dr. **Teitelbaum**. To summarize very briefly my comments on the Select Commission report, they are overall positive, but with some important reservations and doubts.

I am positive because I believe the Select Commission has dealt forthrightly and fairly with most of the pressing issues of U.S. immigration and refugee policy, with basic recommendations that follow the following six principles.

First, the Select Commission, correctly in my view, recognized the fundamentally international nature of U.S. immigration and refugee problems, a fact often missed by many commentators.

Second, it is clear that the Select Commission report is pro-immigration. It is at pains to recognize the positive contribution of immigrants, and seeks to debunk many of the negative images that have been generated over the past decade.

Third, the Select Commission report is clearly opposed to continued illegal immigration, both because it sees negative domestic impacts, and importantly, because continued illegal immigration discredits the continuation of the liberal immigration and refugee policy that the report favors. To quote the blunt words of Chairman Hesburgh in his introduction, "U.S. immigration policy is out of control." That is about as straightforward a statement as one can make.

Fourth, the report holds that the problems of illegal immigration can be solved by a combination of deterrents in the workplace, a generous amnesty, substantial increases in legal immigration, enhanced law enforcement and international consultations.

Fifth, the Commission insists upon the maintenance of an individualized burden of proof for mass asylum applicants. Such a requirement has always been part of statutory and case law, but in dealing with the 1980 Cuban and Haitian influxes, there have been judicial and executive attempts to reinterpret the law to weaken or eliminate the burden of proof requirement for persons from one or another country. This, in my view, is a classic case of judicial and executive lawmaking, and the Select Commission's recommendation clearly reaffirms the intent and prerogatives of the Congress in this sphere.

Finally, after careful consideration the Select Commission rejected urgings that it recommend a large scale temporary worker program.

I believe that these basic recommendations of the Select Commission deserve high marks from all Americans, for I believe they are wholly consistent with what are the basic values most of us share on this subject. And in these respects I can only express my compliments to the Chairman, members and staff of the Select Commission.

Having said that, I should also convey my reservations and doubts. First, since this is intended as a panel of scholars, I should tell you that in my opinion the level of scholarship contained in the report is mediocre, at best. Given constraints on time, let me simply refer you to my written testimony on a variety of points in this regard. But the take-home lesson is that the Select Commission report should not be taken as the final scientific word on the subject of U.S. immigration.

My major set of reservations about the report, however, concern a few recommendations that I find to be genuinely puzzling. They are puzzling because they run counter to the report's underlying principles, and may actually serve to frustrate some of its major goals.

My guess, for what it is worth—and I have no inside information on this—is that these recommendations are unintentional on the part of most of the Commissioners, resulting from the press of business, and from a failure to consider the implications of some individual recommendations as they interact with others. It is also possible that I have made an error in my own interpretation, because all I had access to was the report itself. I would be glad to correct the record if I am shown that these are errors in interpretation on my part.

At least three main negative effects could result from the Commission recommendations taken as a whole. I should emphasize that my comments here are more in the realm of plausible speculation than of hard analysis, given the absence of the underlying bases for the recommendations, to which I had no access.

First, sharply increase numbers of legal immigrants, with largely uncontrollable "snowball" effects. The report, alas, provides little insight into the numerical assumptions employed by the Commission. But I did note that Father Hesburgh in his testimony of 2 days ago said that a net annual immigration of no more than 500,000 a year would result. That was his statement in his written testimony.

I was puzzled by this, in all honesty, because I had done my own guesstimates based on the recommendations as I read them, and my estimates came out almost twice as high, that is, about 1 million a year. I spent more than an hour on the phone yesterday, therefore, with one of the Commission staff who was very helpful to me, and I would like to thank him for his assistance. I think I now understand that we are simply using comparable numbers, but very different assumptions.

Members of these committees and their staff should know, that the Select Commission numbers, a cited by Father Hesburgh, do not include any of the legalized illegal aliens recommended. They assume further that out-migration each year equals fully 30 percent of in-migration each year, which is a very high assumption by any standards. Finally, it appears that low estimates are included of the number of immediate family members of legalized illegal aliens who would petition for family reunification. This is how we can come out with such markedly different guesstimates based on the same gross numbers. Obviously I believe that all of these assumptions require careful scrutiny by members and staff of these committees.

The second likely deleterious effect is increased concentration among legal immigrants, by nationality and by language. This seems likely, especially from among the national and language groups now expressing the most powerful pressures for emigration to the United States. This effect would run counter to the goal of pluralism and diversity expressed by the Commission.

Third and finally, sharp increases in the backlogs of applicants for numerically limited visas, which runs counter to the intent of the Commission to reduce backlogs of numerically limited applications.

I will skip over the rest of this, Mr. Chairman, because I see my yellow light, but just say that I think your staff could do similar analyses of the recommendations take together in a fairly prompt and expeditious manner. Certainly the discipline of numerical assessment and projection should be applied to the Select Commission report.

In summary, I believe we should all express our debt to the Select Commission for, overall, a balanced, humane and realistic assessment of the disarray of U.S. immigration and refugee policy. Thank you, Mr. Chairman.

[The prepared statement of Dr. Teitelbaum follows:]

PREPARED STATEMENT OF MICHAEL S. TEITELBAUM

Chairman Simpson, Chairman Mazzoli, Members of the House and Senate Subcommittees on Immigration, Ladies and Gentlemen:

My name is Michael S. Teitelbaum. At present I am a Program Officer at the Ford Foundation, and previously was Staff Director of the House Select Committee on Population. I am appearing before you in my personal capacity.

I have been asked to comment upon the Report of the Select Commission on Immigration and Refugee Policy, which was transmitted to the Congress and the President on March 1, 1981. I know that several Members of these two committees served on that distinguished Commission, and so I shall not spend any of my time reviewing its findings and recommendations. Instead, I propose, first, to characterize the underlying principles and assumptions that appear to have guided the Select Commission, second to assess the empirical basis of these positions, and third to make some comments on its recommendations.

UNDERLYING PRINCIPLES:

First, it is clear that the Select Commission report recognized the fundamentally international nature of U.S. immigration and refugee problems. While the fact that such problems have international components may appear obvious to Members of these distinguished Committees, the Select Commission apparently considered it important to highlight the matter, since many American commentators seem to view immigration and refugee problems in purely domestic terms.

Second, it is clear that the Select Commission report is pro-immigration. It is at pains to recognize the positive contribution of immigrants, and seeks to debunk many of the negative images that have been generated over the past decade. It also recommends, in different places, a series of changes that cumulatively represent very large increases in legal immigration, although it seems likely to me that many of the Commissioners were not aware of the totals involved. I will comment further on this point later.

Third, the Select Commission report is clearly opposed to continued illegal immigration -- both because it sees negative domestic impacts and (importantly) because it discredits the continuation of the liberal immigration and refugee policy that the Report favors. (In the blunt words of Chairman Hesburgh's Introduction, U.S. immigration policy is "out of control.")

Fourth, the Report holds that the problems of illegal immigration can be solved by a combination of: deterrents in the workplace; a generous amnesty; substantial increases in legal immigration; enhanced law enforcement; and international consultations.

EMPIRICAL BASIS:

I believe the above four points fairly represent the principles of the Report. What, then, is the empirical basis of these?

The evidence supporting the view that U.S. immigration and refugee problems are international in origin and scope is overwhelming, and needs little comment here. It is worth adding to the Commission's discussion that the strong economic, demographic and political pressures that have generated rapid increases in international migration over the past decade seem likely to grow substantially over the rest of the century, and that the growing pressures for migration that result are likely to be directed especially toward the United States. This is true because of:

- Near-certain rapid demographic growth in the major sending countries: Perhaps three-quarters of legal immigration to the U.S., and the vast majority of illegal immigration, now comes from developing countries. According to conventionally-accepted UN projections, the population of the developing world can be expected to increase by 1.6 billion people over the next 20 years alone. Because rapid population growth has a "momentum" that lasts for 50-60 years, such huge increases will occur even if fertility declines occur very rapidly, barring catastrophe.
- Near-certain dramatic growth in the labor forces of the developing world:

  The large numbers of children who were born and who survived during the 1960s and 1970s will become adults in the 1980s and 1990s. The

International Labour Organization projects a growth of 600-700 million in the Third World labor force during those two decades alone -- to put these numbers into proper perspective, 600-700 million is more than the entire number of people employed today in all of the industrialized countries taken together. Since international migrants usually are adults rather than children, the major migration pressures resulting from rapid population growth since 1960 are just beginning, and should be felt most powerfully over the coming 20 years.

-- Possible increases in instability, of economic or political complexion, in much of the Third World:

This is speculative, and I will leave an assessment to your own judgment. But if you believe instability will be high, so inevitably will be the number of refugees.

-- Near-certain improvements in international communication and transportation:

The improvements resulting from jet airliners and satellite television communication since the 1960s surely have reduced the "natural" barriers to international movement of distance, time, cost, accessibility, and knowledge; such improvements seem likely to continue through the coming decades.

-- Closing of other major countries of immigration:

It is a fact that most of the countries other than the U.S. that were previously open to substantial immigration have curtailed entry over the past decade, e.g.:

- West Germany
- France
- Australia
- Canada
- United Kingdom
- Switzerland

A few other countries remain quite open, e.g. Argentina, but overall there are very few countries now to which anyone in this room could immigrate and become citizens. The closure of alternative destinations naturally concentrates increasing flows even more heavily on the United States.

These facts of life, if you will, presage growing pressures for entry to the U.S. Most of the causes are not of American making, but they do provide a sobering picture of the prospects for reducing the "backlogs," for which fond hopes are expressed in the Report. They also emphasize the importance of considering foreign trade and assistance policies as important components of a comprehensive immigration and refugee policy.

The second underpinning of the Report -- that continuation, or even substantial expansion, of a liberal immigration policy is good for the United States -- is more value-laden than the first. It is also based on less obvious empirical evidence, which is discussed with less-than-adequate balance in the Report. It is here that the Commission may have been least well-served by its staff.

Rather than boring you with a line-by-line textual analysis, I would submit the following propositions for your consideration:

(1) I join the Commission report in believing that a controlled openness to immigrants and refugees is in the U.S. national interest. It contributes greatly to the diversity and vigor that distinguish American society from many others. It is also humanitarian in that it provides for reunification of families and for the rescue of a modest percentage of the millions of refugees suffering and dying around the world. In saying this, it must of course be acknowledged that there may be conflicts to be resolved between the national interest and humanitarian values, and between the short- and the long-term.

(2) This shared belief, however, leads only to a conclusion that the U.S. should continue to be open to controlled numbers of immigrants and refugees. It provides no guidance whatever regarding the numbers and composition of immigrants that would contribute on balance to the national welfare. Surprisingly, at no point does the Report seek to justify any particular size of immigration flow, nor does it ever even "sum up" the total implied by its own recommendations --- a lack worthy of further discussion (see below).

(3) The reviews of scientific research literature on immigration produced by the Commission staff and (appearing as the Introduction to Section III: The Admission of Immigrants) are quite disappointing in their coverage and balance.

For example:

- The text notes correctly that immigration accounted for fully 40 percent of population growth in 1900-1910. It then states by comparison that less than 25% of population growth was accounted for by immigration in the 1970s.[1] In making this comparison it fails to note the rather obvious points that: immigration in 1900-1910 was numerically unlimited, but has been limited since 1921, and that the 1970s percentage is the highest since then; that legal immigration rose rapidly as the 1970s progressed and the pressures seem likely to continue to rise for many years; and -- most remarkably -- that the 25% figure cited includes only legal immigration, and that the recent levels of total immigration are almost surely as high as (or higher than) the 1900-1910 decade if conservative estimates of net illegal immigration are included. (This last lapse is all the more surprising since it follows a lengthy discussion of illegal immigration -- clearly the Report drafters were aware of the phenomenon.)

- The text is similarly correct, but misleadingly incomplete, in its discussion of the concentration of immigrants among source countries.[2] Again it fails to note the elementary point that national concentration is much greater than stated if conservative levels of illegal immigration are included. Nor is any mention made of the fact that linguistic concentration among immigrants is now very high -- about 35% of legal immigrants are Spanish-speakers, and perhaps 50% of all immigrants if the net illegal flow is taken into account.

- The Report drafters appear to be lacking in demographic sophistication. It is correct, as far as it goes, that "the future size and composition of the U.S. population is far more sensitive to variations in fertility than to changes in the level of immigration" (p 98). A balanced and informed presentation, however, would have to also state that immigration is coming to dominate U.S. demographic change (it now accounts for 40-50 percent of population growth), and that at the low levels of fertility that now characterize all developed societies, only moderate levels of immigration are possible if such predominance is not to increase.

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[1] Report, pp 91-94

[2] Report, pp 94-97

- The Report drafters also apparently lack economic expertise. The bold pronouncement that "[E]conomists agree that immigration has been and continues to be a force for economic growth in the United States..." (p 99) does not accurately represent any consensus among economists, most of whose practitioners would make a far more qualified statement. Indeed, as one who attended the Select Commission's own "consultation" on this subject, I can report to you that if anything there was quite the opposite consensus among the 21 participants (less one dissenter): namely, that the contribution, if any, of immigration to U.S. economic growth under current conditions is likely to be very small. Unfortunately none of the Commissioners attended this consultation, and the Commission staff who were there apparently heard a different message. For the record, then, the general view as I read it would be that immigration at moderate levels can be of benefit to per capita economic growth by admitting highly productive persons and by providing certain skills that are in short supply in the labor force; but that large-scale immigration (especially of low-skilled workers) contributes to such growth only under conditions of very low unemployment producing labor shortages and bottlenecks --- conditions that have not characterized the U.S. for many years.

- Similarly, the impact of present immigration on labor force growth is empirically far greater than implied in the Report, which describes it as "marginal since immigration contributes a relatively small proportion of the total labor force" (p 99). If the conventional practice is followed of comparing total net immigration to annual increase in the labor force rather than to the total labor force, legal and illegal immigration today account for a very substantial percentage of that increase.

There are numerous other weaknesses at this empirical level, but I think I may have conveyed through these examples my general point that the text of the Report should not be taken as the final scientific word on this subject.

SELECT COMMISSION RECOMMENDATIONS: COHERENCE, BALANCE, REALISM:

Commission reports, of course, do not pretend to be scientific documents, and it is in the coherence, balance, and realism of its recommendations that any such report must ultimately be judged. In this respect, I believe the Select Commission report deserves high marks in most respects, at least in terms of my basic values --- values that I hope are shared by most Americans, *viz.*:

-- support for continued openness to moderate flows of legal immigrants, and for flexible and liberal policies towards genuine refugees.

-- support for measures to sharply curtail illegal entry and visa abuse, with great care exercised to minimize civil liberties risks and a realistic recognition that some small illegal flow will continue even under optimal conditions.

-- support for broad-based pluralism among legal immigrants and refugees, eliminating all vestiges of past racial admissions criteria, and avoiding long-term domination of immigrant flows by any national, racial, religious, ethnic, or linguistic group.

In reading carefully through the Report, I found its recommendations consistent with these principles in the large majority of cases, and can only express my compliments to the Chairman and Members of the Commission. In my opinion, the Report shows balance and good sense in at least the following critical areas:

(1) An appropriate emphasis on the importance of sustaining openness to legal immigrants and refugees, while sharply curtailing illegal immigration.

(2) Within that emphasis, a balanced approach involving deterrents in the workplace (employment being the primary magnet for illegal immigration), coupled with enhanced enforcement efforts, and appropriate foreign and trade policy initiatives to assist sending countries in reducing the pressures for out-migration. (However, as suggested by the earlier discussion of the "push" factors in developing countries, I would put even greater emphasis than did the Commission on foreign assistance and trade policies.)

(3) Due attention to an important element of immigration law violation that is often ignored in public discussions --- visa abuse by persons admitted legally as tourists, students or business visitors.

Such people may account for as much as 50 percent of the illegal alien population, are largely from countries other than Mexico, and deserve at least equal attention with problems surrounding Mexican nationals and the U.S.-Mexico border.

(4) Support for an amnesty or legalization program for illegal aliens who have established roots in the United States, but only after effective measures to bring illegal flows under control are in place. Legalization of a less well-considered type could easily serve to accelerate illegal migration flows.

(5) Insistence upon the maintenance of an "individualized burden of proof" for mass asylum applicants. Such a requirement has always been part of statutory and case law, but in dealing with the 1980 Cuban and Haitian influxes there have been judicial and executive attempts to "re-interpret" the law to weaken or eliminate the burden-of-proof requirement for persons from one or another country. This, in my view, is a classic case of judicial and executive lawmaking, and the Select Commission's recommendation clearly reaffirms the intent of Congress in this sphere.

(6) After careful consideration, the Select Commission rejected urgings that it recommend a large-scale "temporary worker" program. This negative recommendation deserves special comment because legislation providing for such a large-scale program is presently before the Congress. Indeed some spokesmen for the present Administration have hinted that such a program might warrant their support. It is clear that the Select Commission considered carefully the pros and cons of such a program, and its discussion is one of the more lucid in the Report.

On this subject, the empirical and historical record is fairly clear: first, little justification of general economic benefit can be found for such a program when 7-1/2 million Americans are unemployed, although a relatively small number of industries and employers could clearly expect to obtain benefits from such a program. Second, in order to make a significant "dent" in illegal migration, such a program would have to admit very large numbers indeed. Third, the recent experiences of Western

Europe provide overwhelming evidence that even in cases of clear national advantages to such programs in the short term, the medium-to-long term costs can be very high.[1]

In view of the strenuous lobbying for such programs by a minority of U.S. employers, a brief summary of the European experience is worth highlighting: temporary worker programs can have positive short-term economic impacts, but only when unemployment rates are very low (unemployment was significantly less than 2 percent in Germany when its program was instituted); social and political problems are likely to result in the medium term and must be taken into account in assessing costs and benefits; and temporary migration often proves to be more permanent than temporary, as is evident from the continued presence of 12 million guest workers and dependents in Western Europe. The legislation now before the Congress surely warrants attention to such considerations, which presumably underlay the Select Commission's negative recommendations on this subject.

ABERRATIONS OR ERRORS:

In spite of the overall balance and good sense of the Report, there are certain recommendations which I find to be genuinely puzzling. They are puzzling because they run counter to the Report's underlying principles, and on balance may serve to frustrate some of its major goals. It is possible that these recommendations are aberrations and unintentional, the product of the press of business and a failure to consider the implications of some individual recommendations as they interact with others. It is to these recommendations that I shall devote the balance of my comments.

At least three principal deleterious effects of the composite of Select Commission recommendations could arise in the real world: sharply increased numbers of legal immigrants, with largely uncontrollable "snowball" effects; increased concentration among legal immigrants by nationality and language; and sharp expansions in the backlogs of applicants for numerically-limited visas. I shall deal briefly with each of these possible outcomes in turn.

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[1] Admission of temporary workers were long ago curtailed in most European countries, inter-ethnic tensions have arisen in many settings, and as unemployment rates rose there have been numerous (largely unsuccessful) efforts to encourage temporary workers already present to return to their homelands. The French Government, for example, is now offering its temporary workers large "golden handshakes" to return home, and the issue is reportedly a prominent one in the current French presidential campaign.

In so doing, I should emphasize that I have had available neither the time nor the resources to test and quantify these possibilities; as such, they remain more in the realm of plausible speculation than of hard analysis.

(1) Sharply expanded numbers of legal immigrants, with largely uncontrollable "snowball" effects:

Such expansion would seem to be the likely effects of four of the Select Commission recommendations, taken together:

- Expand numerically-limited ceilings from 270,000 to 350,000 (III.A.1);
- add additional 100,000 per year for 5 years to "allow backlogs to be cleared" (III.A.2);
- legalize or amnesty most present illegal aliens (II.C.);
- and continue unlimited immigration of immediate family of U.S. citizens (III.A.1).[1]

The Report, alas, provides little insight into the numerical assumptions employed by the Commission, so I have been forced to apply my own rather conservative assumptions. In rough terms, these lead to an average annual immigration over the coming five years (amortizing the "lump" of the legalization of the period) well in excess of 1 million legal immigrants per year. (To this we would have to add whatever level of illegal immigration would continue after the recommended policy changes.) Moreover, applying rather conservative assumptions about naturalization rates and numbers of immediate family members, the "snowball" effects of continued unlimited immigration of immediate family members of U.S. citizens implies equally high numbers 6-10 years out.

(2) Increased concentration among legal immigrants by nationality and language:

Increased concentration would appear to be one result of several SCIRP recommendations, taken together:

- Legalize most present illegal aliens (II.C.);
- allow from any one country an additional national

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[1] Recommendation III.D.5, favoring the creation of a new category of "independent immigrant," fails to indicate whether such a category would fall under the recommended 350,000 ceiling on numerically-limited immigrants (nor does it mention any order of magnitude for such a category). The above discussion assumes conservatively that whatever number the Commission intended for this category would be included within the numerically-limited total of 350,000. Other recommendations not mentioned here also imply increased numbers, but the Report assures us that their magnitudes are small, e.g. expanding the immediate relative definition eligible for unlimited entry to include grandparents and unmarried adult offspring of U.S. citizens (III.C.1).

ceiling[1] for "independent immigration," in addition to continued unlimited family reunification and existing ceilings for numerically-limited immigration (III.D.7 plus III.C.6 plus III.A.1);
- eliminate any per-country limits on a "substantial number of visas" for spouses and unmarried offspring of permanent resident aliens, including those amnestied (III.C.6 plus II.C.).

These recommendations, taken together, seem almost certain to increase the concentration of legal immigrants among the national and language groups from which the most powerful pressures for immigration are now being expressed, and which are already dominating total flows. As such they run contrary to the expressed goal of pluralism and diversity among immigrants.

(3) Sharp increases in the backlogs of applicants for numerically-limited visas:

Since the declared intention of one of the Commission's recommendations (III.A.2) is to clear present backlogs, the growth of backlogs that seems likely to result from its recommendations is all the more surprising. Such an expansion could derive from the combined effects of recommendations to:

- Legalize or amnesty most illegal aliens (II.C);
- add eligibility for admission of certain parents of adult permanent resident aliens, including those amnestied (III.C.5);
- continue brother/sister admissions of all U.S. citizens, including amnesty beneficiaries who naturalize (III.C.4);
- continue to admit spouses and unmarried offspring of all permanent resident aliens, including those amnestied (III.C.6);
- add new category of independent immigrants (III.D.5).

A mass amnesty, coupled with continuation of numerically-limited categories for which many relatives of amnestied persons would be eligible, would seem likely to expand already large backlogs; adding new numerically-limited categories for which millions of other prospective migrants would be eligible would only compound the problem. Such increased backlogs would indeed be a perverse outcome, given the Commission's expressed desire to reduce them.

Whether or not the above speculations of untoward combined effects of some of the Commission's recommendations are plausible is a matter accessible to objective assessment, employing the normal tools used by all policy analysts.

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[1] The wording of the Report is ambiguous on this point; the additional national ceiling that appears to be indicated may not have been intended.

These include efforts to project the direct, indirect, immediate and long-term effects of different policy combinations, employing a plausible range of each proposals' effects. Such projection techniques long ago became conventional practice in the budget process followed by all American presidents and more recently by the Congressional Budget Office; indeed the submission of a budgetary proposal without inclusion of the numerical projections that underlie it would be greeted by the Congress and the public with some considerable astonishment.

The discipline imposed by such a process should now be applied to the recommendations of the Select Commission, as Members of the Senate and House proceed to consider the merits of its Report. It seems likely that such a process will demonstrate that some few of the recommendations engender indirect or long-term dynamics into the immigration process that may not have been perceived by the members of the Select Commission as they dealt separately with each of the recommendations --- dynamics that on balance would run counter to the expressed goals of the Commission of devising a U.S. immigration and refugee policy that is consistent with the national interest. Such analyses are also likely to demonstrate the need for trade-offs that were not apparent to the Select Commission in its deliberations. If so, the Congress should exercise its prerogative by deleting or modifying the few recommendations that generate such dynamics, or by making the necessary trade-offs as it sees fit, while still being consistent with the broad outlines and goals of the Report. In recommending that the Congress examine such relationships, I am in no way suggesting that you delay action on legislation that is clearly needed. The kinds of analyses I am urging could be done in the course of the next few months, and need not delay Congressional consideration by a single day. This is especially the case in view of the Select Commission's recommendation, with which I concur, that its key recommendations regarding a legalization or amnesty program should not even begin until appropriate immigration law enforcement mechanisms have been instituted. (Recommendation II.C.3.)

This last point leads me to a closing note on what might be termed "the strategy of delay." This strategy has been adopted by a broad array of advocates of the status quo of rampant violation of U.S. immigration laws, who aver that not enough is known about the effects of the present situation, and that in the absence of full knowledge it is better to delay actions that might have deleterious consequences. Some activists otherwise not known for their respect for scientific research are found, in this instance, to be supportive of the need for long-term intensive research and analysis before any legislative action is taken.

There have, over the past decade, been numerous official assessments of the problems of U.S. immigration law.[1] All came broadly to the same conclusions, recommending significant legal and policy changes to bring U.S. immigration flows under U.S. control. They generally have also recommended or implied some form of amnesty for large numbers of illegal aliens present in the United States; the Select Commission's amnesty recommendation is only the latest in a series. An examination of the amnesty "cutoff dates" (i.e. the date before which residence must be established to be eligible for the amnesty) recommended by these several reports is instructive:

	Report date	Cutoff date
House Judiciary Committee	1975	1968
Domestic Council	1976	1968
President of the U.S.	1977	1970 (plus limited amnesty to 1977)
Select Commission	1981	1980

All of the distinguished Members of these Committees are, by definition, highly successful in the art of politics. As such I know you will recognize from the above listing that the political strategy of delaying reform in U.S. immigration law must be judged a highly successful one. Despite the difficulties and sensitivities of the issues involved, it is clear from all measures of public opinion that there is an overwhelming national consensus favoring prompt action to bring American immigration and refugee policy under national control. It will be up to the 97th Congress to determine if the strategy of delay will continue to carry the day.

Thank you for your kind attention.

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[1] These include at least the following recent examples, among others:

- U.S. House of Representatives, Committee on the Judiciary, Amending the Immigration and Nationality Act, and for Other Purposes, Report Number 94-506, 94th Congress, 1st Session, (1975).
- Domestic Council, Committee on Illegal Aliens, Preliminary Report (1976).
- President of the United States, Undocumented Aliens, (1977).
- U.S. House of Representatives, Select Committee on Population, Legal and Illegal Immigration to the United States, 95th Congress, 2nd Session (1978).
- Select Commission on Immigration and Refugee Policy, U.S. Immigration Policy and the National Interest, (1981)

Representative **Mazzoli**. Thank you very much, gentlemen. I wish I had been here for the first two panelists, but I will try to get up to speed as long as I can stick around here and not have to go back over for a vote.

Both of you gentlemen talk about the numbers or the demographics, which is a science that I am not familiar with, but which essentially tries to predict the movements and growth and diminution of people. If these demographic assumptions, that the Commission has woven into the report are incorrect, what is the net effect of their other statements? What happens with amnesty? What happens with their not using some type of a guest worker program? What happens with their determination to beef up INS?

I would ask the question of you, Mr. Teitelbaum and perhaps all your colleagues, how far off are their general programs if their numbers aren't correct?

Dr. **Teitelbaum**. Well, I think the numbers are correct but it depends on what you include in them. It is a matter for an accountant, almost, and what one includes in profits and loss and capital expenditure and so on is a matter of judgment for an accountant.

Representative **Mazzoli**. Just for example, is that 30 percent of out-migration pulled from a hat? Is there any basis for that, just as a starting point?

Dr. **Teitelbaum**. Mr. Chairman, you just homed in on the one question I couldn't get an answer to from the very helpful staff member of the Select Commission. As far as I know, it is based upon some very speculative information, and you may want to ask the other witnesses if they think 30 percent annual diminishment of gross in-migration is a plausible figure. To me it sounds very high.

Representative **Mazzoli**. Mr. Keely?

Dr. **Keely**. I think where that estimate comes from, Mr. Chairman, is a piece of work that was done by researchers in the Census Bureau looking at the out-migration between 1960 and 1970, using demographic methods applied to Census statistics. They found that a little bit over 100,000 foreign-born persons left this country. If one adds in some assumptions about the native-born who emigrated, for that period it came out to about 30 percent of the legal immigration that came to the country.

That 30-percent estimate is an extrapolation from the 1960's experience because that is the latest information we have. We would have to wait for the 1980 census to estimate the 1970's but it is not even clear whether, given the problems of the 1980 census and undercount, the same kinds of techniques could be appropriately applied.

Representative **Mazzoli**. Mr. North?

Mr. **North**. Let me tell you a story about the U.S. Government and the question of emigration. Once upon a time in a previous administration, the former director of the Census and I put together a proposal to Government agencies about studying emigration. The problem was that this was during the war in Vietnam and the people emigrating were often young males who were protesting with their feet against our participation in that war. The Government was absolutely horrified with the possibility of doing any research on that subject, and they did not fund it.

One of the things we keep running into is gaps in knowledge, and sometimes the gaps in knowledge are because it is awkward to do something. I mean it is hard or difficult or expensive. And sometimes it is because we don't want to know. I am afraid that there are some gaps in information in this field that result from that. I am not sure that this is one of them right now, but I would suggest that the system be pressed a little bit as to why we have these fairly substantial gaps in our information.

Dr. **Bouvier**. I would agree with David North. Let's face it. We have no solid data on emigration. The official Census Bureau position has been 10 percent. The work by Census Bureau employees that Charlie Keely referred to suggested it might be as high as, at the very top, 30 percent of legal, at the very highest.

Representative **Mazzoli**. Which is not to talk about the illegal.

Dr. **Bouvier**. That's right, so obviously the percentage would drop.

Representative **Mazzoli**. When we were in California 2 weeks ago, there were some people who would say that some of the Mexicans that come across the border are really intent on working and getting a little nest egg and then going back home. There is a kind of in-flow, out-go. There is a revolving door there.

Is there any data to show that at all? Has there been anything that is at all reliable to suggest that these people aren't just simply coming and staying?

Dr. **Keely**. Mr. Chairman, what we are really getting here is what is the flow and what is the net addition of that flow to the stock. That stock, if you view it at any one point in time, that may be a little bit misleading. Take, for example, the foreign students in this country. There is a lump of them. The individual incumbents may turn over, but sometimes that lump may itself increase because there are more entrants than exits.

With the undocumented persons, we may have some who are here, say, even seasonally. There may be some who stay for a few years. There may be some who in fact settle in. In other words, it is a very fluid kind of situation.

The best information that I have seen is that we have an outlyer of about 6 million. That is an outlyer. I have heard all kinds of disagreement about the flow, the actual addition of permanent to that stock.

Representative **Mazzoli**. Is it your general feeling that this lump, if I could use the term that Mr. Keely talks about, is probably expanding, even though the border patrolmen can nail the same person coming across two or three times a year?

Dr. **Keely**. Yes, it probably is expanding and I would suggest it is probably expanding more in those places away from the Mexican border than it is at the Mexican border.

Mr. **North**. I would like to say one thing in response to that. There are certain demographic impacts of a large number of people, whether they are here for their entire lives or here for 6 months. If you have 6 million people here, that is 6 million people. They don't have very much seniority, which is important in this building, but it doesn't really matter out there.

Dr. **Teitelbaum**. Mr. Chairman, one last comment. The President's Commission on Population Growth and the American Future, which was chaired by John Rockefeller and reported in 1972, estimated up to 1 million undocumented aliens present as of the time of their report, or earlier when they were doing their assessment, and said it was a very serious problem and something very substantial ought to be done about it.

In 1980, the estimate as of 1978 or a bit earlier by the Census Bureau is 3.5 to 6 million, and that is a conservative assessment. So there is really not much doubt in my mind in any case that it is expanding.

Representative **Mazzoli**. Mr. Bouvier?

Dr. **Bouvier**. If you look at the apprehensions that you referred to a few months ago, and you have to be aware that these are apprehensions, not apprehended persons, but nevertheless, the numbers have increased year after year and in the last 2 or 3 years there have been over 1 million apprehensions.

Representative **Mazzoli**. My time has expired. Thank you for your indulgence.

Senator **Simpson**. Thank you for your quick pinch-hitting.

Well, Mr. North, I heard you speaking of the seniority system. I used to scoff at that, and now of course, and Chairman Mazzoli will share this view, it is a remarkable system and should be preserved at all costs. [Laughter.]

Father Ted Hesburgh stated something at Tuesday's hearing which I found thought-provoking. He was speaking about employer sanctions and ID systems. He said:

> I am also persuaded that concerns about the abuse of privacy are not warranted. What protects our society and individuals against the abuse of privacy is the existence of traditions, habits and laws which sustain our first, fifth and fourteenth amendment rights concerning freedom and due process.

That statement made me a bit more generally aware than usual of the freedoms and other favorable conditions that are enjoyed by all of us, a reminder that what really protects and fosters all of these is ultimately not really law, which can be changed and which we do change from time to time, but the shared values, customs, and traditions of the American people, which are the fundamental sources of law. At least that is so in a democracy.

But if those things change, then obviously the law—and the rights created by the law—will also change. The fact that nations differ in their values and customs and traditions is very obvious to all of us, as is the fact that both freedom and prosperity are rare, and always have been.

This is where we get into racism and xenophobia. You stated it well, Dr. Bouvier. In my churning around in this area, that one always comes up. I always say: Well, tell us what we can do, but no fair quoting what is written on the Statue of Liberty because that is a way to take us away from what we are going to have to do, which is to accomplish something important in reform.

But I guess I do believe that it is important for new immigrants to become Americans in the fullest sense—and that is not said in an elitist or racist posture—adopting not only our obvious political values but our public values, our social public values, which may be the source of the political values, things like fair play, compassion, consideration for others, those things.

The question is do any of you share my concern—and when it is voiced, it can be misread so easily—that we exercise caution in the number of immigrants, especially those whose cultural backgrounds may seem more different or more foreign to the bulk of our people than have past immigrants seemed to the majority population at those times, and also that we do the very best we can to assist those who come here to become American in more than just a geographic sense. I would appreciate your comments on that. I hope you understand the context and the sincerity in which the question is offered, and that it is not intended to lead to a return to days past in immigration policy, much of which has been offensive to me.

Let's just start right down the line, as we have a little extra time. I would like your views.

Dr. **BOUVIER**. I too share many of your concerns. Looking at it from a demographic dimension, and I don't want to suggest any demographic determinism, it is a fact that our society, because of our changes in fertility and immigration, is changing significantly. I think that we should not turn ourselves away from the problems we will be facing over the next few decades as a result of a growing proportion of the population being of different backgrounds from the present one.

Now having said that, I am quite aware that a very similar situation occurred at the turn of the century. There is no question about that. I quoted earlier from our calculations that 40 percent of the population in 2080 will be post-1980 immigrants and their descendants. And that has been about the proportion in the past. I understand that Father Hesburgh made a statement that 45 percent of the population of 1980 were 1880 descendants. I am not quite sure that figure is accurate. I think it is more likely between 35 and 40 percent. But the point is taken that we have had major changes in the past.

Now between 1880 and 1980 we had many difficulties especially at the turn of the century adjusting. My position at the present time is that we will have new difficulties of a different type perhaps because there are some racial issues here that we have to adjust to. Now this is not a racist statement in the slightest bit. What it is is let's prepare ourselves for a different kind of society that is emerging, and I would certainly urge the subcommittees to solicit the thoughts of sociologists who are specialists in the assimilation process and so forth. Can we expect the same kind of assimilation? Will it be different? I think we have some major issues that face us and we should face them honestly and openly.

Senator **SIMPSON**. Thank you. Dr. Keely?

Dr. **KEELY**. Mr. Chairman, yes, I think we have to be concerned but I think we have to be concerned primarily because of the social reaction on the part of our population, as opposed to the possibility and probability of assimilation. We have assimilated and continue to assimilate people in this country. We are different and we do change. And part of the contribution to that change is immigration. But I think we ought not to underestimate our assimilative capacity.

I would also point out that on the issue of change, there are probably greater changes going on in this country right now and have been for the last 10, 15, or 20 years because of domestic developments, not because of immigration. The civil rights movement in this country, the decline in fertility, greater female participation, women's rights, the changes in fertility. A number of changes are going on that I think clearly overshadow the kinds of changes that we may be experiencing from immigration.

My point is that we must expect change. If you don't change, you die. And we should expect those changes. The issue is, what is the capacity of our population to accept change, and not really so much the capacity of immigrants to be absorbed, to accept the American ethos, which they have very well.

Senator SIMPSON. Thank you. That is provocative. Please, Mr. North.

Mr. NORTH. Thank you. My concerns are primarily with the total numbers of persons arriving. I sense that we are the Nation that receives more legal immigrants than any other in the world. Some people claim more than all others in the world combined and that may be stretching it a bit. And I think we should continue to have substantial access to the country for legal immigrants.

However, there must be a limit of some kind and I am concerned about that. That is the question of numbers. I am concerned about that.

I am also concerned about the conditions of presence. By that I mean the legal presence or the lack of it. I am worried about the persons who are here illegally. I am worried about them as individuals. I am also worried about their impact on parts of American life, particularly on the American labor market.

So I am worried about the legal conditions of the migrants who are here. I am more worried about the total numbers and their conditions, than I am about nation of origin or language.

Senator SIMPSON. Thank you.

Dr. TEITELBAUM. Mr. Chairman, as the tail end of this discussion, I would simply associate myself with what I took to be your criticisms of the 1924 act, which I consider to be blatantly and self-consciously racist. It was discussed as such it was deliberately so, and I don't think there is much doubt about it. But I think the 1965 reforms have gone a very substantial way toward rectifying that situation, and I am not very concerned about that kind of problem in the law as present.

However, I would say that one reason for urging, as the Commission did, diversity and pluralism among U.S. immigrants and refugees, apart from personal preferences for diverse and pluralistic restaurants and so on, is indeed to assure that one does not have an undigestible lump, if we are speaking in lump terms again, of people who are not permeable, if you will, to the overarching values and norms.

Obviously, numbers overall again have to be attuned to the changing demographic circumstances, as Dr. Bouvier has said.

Finally, along these racial or ethnic lines, I think it is very important to assure that whatever is the immigration policy, it does not unfairly burden or disadvantage minorities in the United States, including past immigrants and refugees.

Senator SIMPSON. We have a little bit of luxury to kick things around, which we don't get in the 5-minute limits. And let me tell you I do indeed share your views about the 1924 act and its blatant racism and exclusionary practices and its discrimination.

But, if our values change as a result of immigration, can we reasonably assume that the true freedoms and the things that we have that are dependent upon those values will survive the change? That is a peculiar question in a sense but we see people fleeing from other countries of the world, who flee because of low productivity and low wages, problems of separatism and political repression. Yet the very things that they seek to leave behind could come to pass in this country. I don't know. I tumble around in that, trying at all times to divorce that from the fact that we are the country that does it with such awesome grace and brilliance.

Do you have a comment on that?

Dr. KEELY. Mr. Chairman, I think all of us at this table have spent a good many years and have some agreements and disagreements. One of the things that I think we would all agree on is that when one finally comes down on a number of these issues, it really comes down to a judgment about whether you are optimistic or pessimistic.

If we are optimistic about our future in terms of our assimilability (when we look on our past history, we would be optimists); if we had a fairly strong economy at this point and better outlook than we do now, we may not be as concerned about some of the questions of labor impact.

So I think there is a certain irreducable judgment that finally we have to come to about the capacity of this Nation, politically, socially, economically and so forth, to admit large numbers of people. It is certainly a part of our ethos to do it, more so than other countries.

The issue really comes to this: is the future going to be the same or at least similar to the past in term of our ability to do that? That is a judgment that, after all is said and done, somebody is going to have to make, and by and large the ingredients for that go into the makeup of the men and women who are elected to do so.

Senator SIMPSON. You are putting it right back where it ought to be, aren't you? And yet the Congress is where it has been so tough to accomplish reform in this area. If you will notice, as I have in some of my historical dabblings, the only time something gets done with the immigration laws is when somebody comes from some State that does not have the tremendous competing constituencies that would make someone unable to respond.

And yet you all, because you follow it so closely, are seeing for the first time, that there is a growing unanimity among what used to be very divergent groups on this issue, with one exception, and that exception is the one that concerns me the most. We see the black community interested in doing something, because they know that they will be injured in the process if it continues. We see the labor movement ready to do something. We see those who want to do something for the wrong reasons, wanting to do something, and those who want to do it for the right reasons wanting to do something, but there is one group which is the most fearful, and I have said it before and rightly so, and that is the Hispanic community.

Your commentaries are very real when you talk about the Caribbean and the Third World being there and the 16 million, the 17 million. Your comments talk specifically about, I believe your phrase is an unusually high degree of persons speaking a single foreign language, Spanish. And where do we go with that one? I sensed from our witness yesterday, I heard her saying: "who is going to take care of us? And we know that you are talking like you want to do it right but it won't come out right. We will be the ones most injured." Those are things that concern me.

How we can best protect these people? In their opposition to specific proposals in a sense what they are saying is that they want nothing to be done. They are opposed to employer sanctions and opposed to identification systems and opposed to various things and are left with the machinery we already have, which doesn't work.

Now the other element. You can each respond, because it seems to me that is the one we are going to have to get up on the table with the most skill if we can. We have this nation, our southern neighbor, of 63 million people, half of the population being under the age of 15 and the population of that nation will double by the year 2000. That is for starters. And how then do we deal with that one, the safety valve theory which is pressed upon us, that we should have the safety valve here, especially so that we do not rupture our relations with that southern neighbor, who now are finding themselves an emerging industrial nation, an oil and gas-producing nation, that type of thing, and yet this tremendous population.

There, have a go at that.

Dr. **Bouvier**. First of all, somewhat more optimistic words about Mexico. There is some progress beginning to take place in Mexico in reference to lowering fertility. That doesn't negate the fact that by the turn of the century the number of people who will be moving here are already born, so there is no question about the enormous problem.

So to lay the groundwork, let me just say that we should never lose track of the fact that the potential for migration to the United States is awesome. I know it has been said before but I think it can be said over and over again. That is not to say that half the population of Mexico wants to move to the United States. Furthermore, we shouldn't limit ourselves to considering just Mexico. Refugees from all over the planet would love to come to the United States. We know that those numbers are going to grow incredibly in the next couple of decades. So the issue will not go away, from that point of view.

Second, Dr. Keely referred to the historical patterns. I think it is very important for us and for the subcommittee to certainly review very closely, and I am sure you have on the Commission, the problems that occurred at the turn of the century, the issues that came up and so forth. It's amazing how there is deja vu as you read some of the statements of that time. And thank goodness there have been improvements in that at least our educated people today are not making the kinds of statements that came from some of the "elite" of the turn of the century.

Having said that, however, I think we can benefit from the historical picture, but not make the mistake of assuming that it is "law," that it is the same thing again. The point you made earlier, Senator, about let's move away from the Statue of Liberty. It is 1981 now. The issues are different.

For example, as Dr. Teitelbaum has referred to in his written testimony, the language issue is quite different. The people moving in come from a different source. So we have a different kind of issue emerging.

Now the point of all this is first of all, do we want to assimilate these groups or not? I would argue yes. How is another point. Do they want to be assimilated is another very important issue. Everyone has referred to the earlier groups being assimilated. There is interesting literature on that. Some groups are assimilated much more rapidly than others. Some have resisted. What will be the future situation? This has to be looked at very closely as we look at, just to cite one issue, bilingual education.

There is a whole group of new problems emerging that we have to face on this point.

Senator SIMPSON. Dr. Keely?

Dr. KEELY. Mr. Chairman, I would like to continue along that line. It seems to me that regarding migration from Mexico, and one could generalize to the southern part of this hemisphere in general, the issue the probably ought to be focused on, before trying to go into the detail of that kind of thing that your question implied, is what is the U.S. policy going to be about the question of group relations? We are not sure right now. We are going through one of our periodic redefinitions of pluralism in this country.

And this comes not only from immigration. For example, the civil rights movement and the contribution of the black people of this country to civil rights has also raised a very important question in this country, and that is rights of the individual because of group membership and group characteristics. And the policy and the action on that particular line has gone on independent of the policy and action on immigration, but clearly the two interact.

For example, do you give minority right benefits to recent immigrants to make up for past wrongs to minorities in this country? That is the kind of thing that we are into.

The language issue is clearly the most important one. We are not clear about what we mean by bilingualism, it seems to me. There are different definitions of it. There are different political goals, depending on who is involved in it. It means not only a social policy; it means such things as jobs and access for many people. Bilingual education is for some people what the police force was for Irish in earlier times. So it is more complicated than just the social or cultural issues.

So it seems to me that this is the first thing. If we are very clear in our minds that assimilation or integration into this country is going to mean a single language for national unity; that second languages are tolerated, they are fine and can be used, but not tolerated for public use as an official language of one sort or another, than that is going to be the way we are going to go; we are not going to require a dual language and so forth.

And if we are going to basically go on that kind of line, that public life in general is going to require conformity to the American pattern as it exists, rather than a radical change to a bilingual kind of society, then it seems to me a lot of the questions are less nettlesome for us.

However, it is not clear that that is the route that this country wants to go, or at least significant portions of this country, particularly among the Hispanic community.

Until that particular question is settled, it seems to me that we can go round and round on whether to give a higher quota to Mexico or whether to have a country ceiling or whether to have this, that or the other thing. But it really finally comes down to what are these people going to do or what are we going to demand of people for that end part of the immigration process, which is the settlement.

Senator SIMPSON. Thank you very much. Mr. North?

Mr. NORTH. OK. First of all, I think there are five things that should be done; none of which are going to be magic, but each of them will help incrementally.

The first thing we ought to do is not overstate the significance of Mexico's contribution to our undocumented population. It is something like 55 or 60 percent. It is very important and they are very nearby. But allowing the conversation to drift into a United States-Mexico relations conversation is not a very good idea. Trying to solve some of the problems by signing a treaty between the United States and Mexico, is not a very good idea, either. Among other things, that doesn't bring in very much consultation with the House of Representatives, which is also represented here.

So I think that we should bear in mind that undocumented workers come to this country from many, many places. We should understand that and regard this as an international phenomenon, not just a binational phenomenon.

Second, the U.S. Government is dealing with the very real, vivid vehement memories of the Chicano population about the experiences that they and their parents have had, and some of these experiences are very recent. We can't wipe that away. We should be aware of what we did in the 1930's when we deported a number of people, including citizens. We just simply chartered trains and pushed people on the trains and sent them back to Mexico.

The daughters and the sons and grandsons and granddaughters of the people who were forcibly pushed back in the 1930's are with us now in leadership positions. We should be aware of that and be very sensitive about these very real issues.

Further we should be very careful about consultation. Consultation should be on a wide scale with many representatives of many organizations. There are a number of competent, outspoken Hispanic organizations that would like to contribute to this dialog, and they all should be included as much as possible.

Beyond consultation, I would suggest two other aspects that perhaps would help. One is the encouragement of labor-intensive economic development in Mexico. We do not have an AID program in Mexico. Mexico does not want it. We do have some input into the Mexican economy through the private sector and also through the international banking community.

We also have an option of dealing indirectly with economic development questions in Mexico through our trade and tariff policies, and to the extent that we can encourage labor-intensive economic development in Mexico, I think that will be useful in the long run, and I also suspect that it will be helpful to us in our relations with Mexico.

There is, for instance, the desire of the Mexican Government to ship more winter tomatoes to American markets. We should take a deep breath, and perhaps subsidize the people in Florida who would be hurt by that, but we should make a real effort to open up what markets we can within the United States for labor-intensive sorts of activities in Mexico.

I am not interested in our encouraging capital-intensive activities in Mexico. Mexico seems to want to use its oil money to build petrochemical complexes and steel mills, which do not require many workers.

Finally, and this is awkward and difficult and important, we should encourage more equity of income distribution within Mexico. The income distribution in Mexico is not as equitable as Taiwan, for instance, or South Korea. There isn't really a significant income tax on the nonsalaried wealthy. There is no food stamp program in Mexico. There is no social security except for the middle classes. I don't know how one goes about it, but it would be useful if there were a better distribution of income in Mexico.

Senator SIMPSON. Thank you very much. Dr. Teitelbaum?

Dr. TEITELBAUM. Well, Mr. Chairman, with the quality of this panel I am in the excellent position of not having to go through a lot of important topics because they have been so well covered. I would associate myself with the preceding comments about remembering the importance of non-Mexican illegal aliens and not focussing on Mexico to the exclusion of many other countries, and also with Dr. Keely's point about the question of affirmative action and its relationship to immigration policy, which is I think a particularly difficult issue.

I would also say that there is more than one group which takes the position that the Chairman has described. There is a small minority, not a disadvantaged minority but a small minority of unscrupulous employers, who seek to profit from exploitation of workers who have no legal rights and privileges. There is a remarkable "unholy alliance" between the group to which you referred and that group, who are among the nastiest exploiters of Mexican-Americans, an interesting group of bedfellows, I would submit.

Finally, I thought I heard you say that the Hispanics or the Hispanic group was intransigent. I think that is an unfair characterization. I don't know if you intended it that way because I think you will find——

Senator SIMPSON. I think you will find the record does not say that. I was telling specifically what they were opposed to. It was not used in that context.

Dr. TEITELBAUM. OK. What I wanted to say is that the Hispanic community is very diverse. The biggest group would be Mexican-Americans or Chicanos, and then one has Puerto Ricans and a large number of other Hispanic groups. I think you will find not only disagreements between Hispanic groups, one from the other. Within the largest, the Mexican-American or Chicano group, I think all the public opinion polls show a sharp division of opinion within that community, which was not reflected yesterday in the testimony of one representative of one group.

Senator SIMPSON. That is so true, and I appreciate your stating that because there are some 81 Hispanic groups organized with constituencies and officers in the United States, and it will be my intention and Congressman Mazzoli's intention to visit with the representatives of each and every one of those groups. One of those sessions was scheduled for tomorrow for me to visit for a couple of hours with eleven of those groups, their leaders, their national leaders. That was scrubbed because of scheduling conflicts. But they are going to find us both accessible and listening because to me that is one of the most significant parts of the issue and the solution of it. And they are divergent. They are geographically as well as philosophically divergent.

Well, we have some things we could work on for a few weeks, I think.

Now I have been told that I have to run over to the Senate chamber, put the veterans benefit package back together, after it has been taken apart previously. I helped take it apart and now I have to help put it together. So I must go, and Congressman Mazzoli is still in the voting pattern over there.

Let me just say how much I appreciate all of the witnesses, of the previous 2 days as well as today, especially this bright and energetic group here, this panel. Like with all of the witnesses, as we get into specifics and deal with our specific hearings in single house proceedings, I very much hunch that you will be asked to return and get into some more detailed things as we put together a package to change our immigration and refugee laws.

So I want to thank you sincerely. I want to thank Congressman Mazzoli for his cooperation and the cooperation of his staff, most particularly Harris Miller and Skip Endres, who are indeed professional staff persons in every sense, and to pay particular tribute to Dick Day, who is the staff director and chief counsel of the subcommittee here in the Senate who I wrenched from his former surroundings with no more lure—certainly the lure of money did not intrigue him. I said I just need somebody who is going to ride an awful rocky path with me for a couple of years. So he has chosen to do that. I hope you will work with him and you will know that he is able to speak for me.

And particularly let me thank three of the very key people who will be guiding the legislative effort for this session, so that we can introduce legislation in this session and get it acted on. That is Donna Alvarado, counsel, and Chip Wood, Charles Wood, counsel, and Arnold Leibowitz, who has had some fine experience with the Select Commission. Chip Wood has been with me since I came here and presents excellent materials, Donna Alvarado also had some experience with the Select Commission. Sensitive people all.

I want to thank Senator Thurmond, as the chairman of the full committee. When we finish our panel work on the subcommittee, we will have a rather prompt addressing of the issue at the full committee level, which has not happened before.

So some curious combination of circumstances I think will serve to see that we get something done. And to Congressman Rodino, chairman of the full Judiciary Committee on the House side, my appreciation to him for his assistance in these joint hearings.

With the help of these fine people and a great deal of patience and good will, we will try to proceed and, as I said before, do something. Thank you very much for your attendance. The hearing is concluded.

[Whereupon, at 5:10 p.m., the hearing was adjourned.]

[The following was submitted for the record:]

APPENDIX

ADDITIONAL STATEMENTS

PREPARED STATEMENT OF REPRESENTATIVE JERRY M. PATTERSON

I appreciate the opportunity to add my remarks to the discussion of the Subcommittees on the Final Report and Recommendations of the Select Commission on Immigration and Refugee Policy, U.S. Immigration Policy and the National Interest.

The Select Commission's recommendations interest me both as a representative of the part of this nation which has received the largest proportion of the influx of Indochinese refugees and as Chairman of the International Development Institutions and Finance Subcommittee of the House Banking Committee, which is looking for ways to help solve some of the problems that precipitate large migrations of refugees and to deal with refugees' needs regionally.

The Commission has done a valuable service in bringing together a large body of information, history and opinion about immigration to this country. The Subcommittees now do a valuable service in bringing greater attention and review to its recommendations.

The Commission's report should be considered especially because the United States is the world's pre-eminent recipient of refugees. This country accepted for resettlement a total of 595,000 refugees from all parts of the world between 1975 and 1980. Given our population, this mean we have a ratio of one refugee to every 374 non-refugees in our country. Canada and Australia, both countries with very low population density, are the only countries in the world with slightly higher ratios of refugees to the rest of their populations. Many of our European allies have taken very few refugees, both in terms of absolute numbers and in relation to their overall populations. West Germany, for example, received only 28,300 refugees in the same five-year period, leaving it with a ratio of one refugee to 2,159 non-refugees. The United Kingdom has received only 23,800, giving it a ratio of 1 to 2,345.(1)

I believe that immigration is important to us. It proves that we truly are who we think we are -- the land of freedom, the land of opportunity, the land of justice and hope. At the same time, as the Commission pointed out, there are problems and costs associated with immigration and these must be recognized and weighed.

The Commission report states

> " research findings are clear: Immigrants, refugees and their children work hard and contribute to the economic well being of our society; strengthen our social security system and manpower capability; strengthen our ties with other nations; increase our language and cultural resources and powerfully demonstrate to the world that the United States is an open and free society.(2)"

But the Report also reminds us:

> "The United States of America -- no matter how powerful and idealistic -- cannot by itself solve the problems of world migration. This nation must continue to have some limits on immigration. Our policy -- while providing opportunity to a portion of the world's population -- must be guided by the basic national interests of the people of the United States."(3)

Immigration to Southern California

I would like to first discuss the experiences of my region, Southern California, with Indochinese refugees and the federal government's response to their needs.

About one and a quarter million people have fled Indochina since the fall of the governments of Laos, Cambodia and Vietnam in 1975. Nearly half a million remain in camps and countries of first asylum awaiting resettlement by the UN High Commissioner for Refugees. Since the refugee crisis first began in Indochina, the United States has taken 44% of the total, nearly 400,000 people.

The influx of Indochinese refugees into Orange County began in 1975 with the invocation of the U.S Attorney General's "Parole Authority," allowing the overriding of existing immigration quotas for refugees driven from their homes in Southeast Asia by Communist oppression and persecution. Since 1978, the Indochinese refugee population in Orange County has increased by an average of 12.7% every month. This level of increase is expected to continue at least through 1981. Orange County, California, now has the largest concentration of Indochinese refugees in the United States.

The County is home to nearly 40,000 Indochinese resettlers -- 10% of all of the Indochinese refugees in the United States, although it holds less than 1% of the population of the United States as a whole. Refugees, much more than other immigrants, are forced by the circumstances of their emigration to be involved in "an immediate competition with needy U.S. citizens for a variety of services which must be paid for by U.S. taxpayers."(4) And, unlike previous groups, these refugees entered an American economy strained by double-digit inflation and rising unemployment. Moreover, the more recent arrivals are generally poorer, less well educated, more likely to have serious medical problems (especially if they have been held in camps waiting for permission to immigrate) and they almost totally lack work skills and experience with urban living. About half of the Southeast Asian immigrants to Orange County qualify for and receive cash or medical assistance or both from Orange County. They comprise one-fifth of the County's entire welfare roll.

Clustering and Secondary Migration

The Select Commission recommended that refugee clustering be encouraged. Its report said:

> "Mechanisms should be developed, particularly within the voluntary agency network, to settle ethnic groups of similar backgrounds in the same areas."(5)

Unfortunately, internal migration of refugees within the United States makes the impact of refugees especially heavy on a small number of communities. By July, 1980, more than half of the Indochinese refugees who had been brought to the United States were clustered in only five states (California, Washington, Texas, Pennsylvania and Illinois) and more than two-thirds were living in only ten states.

Of the 1,000 to 1,200 new Indochinese arriving in Orange County each month, only six to seven hundred are primary immigrants. The other four to five hundred are on their second or third migration within the United States.

There is, of course, no legal mechanism for controlling the migration within the country of a person who has immigrated to the United States. Many secondary migrations are undertaken for the purpose of family reunification -- and, of course, the more refugees there are in an area, the larger the number of potential family reunifications to be made.

According to the Social Security Administration, the "most popular destination for internal migrants is California."(6) California officials estimate that the state will contain about half of the Indochinese immigrants to the U.S. by 1983. Tensions, hostilities and, of course, severe financial burdens have accompanied this resettlement. Relatively little research has been done on the specific problems of secondary migrants, but a 1979 study by the Brookings Institution (7) estimated that secondary migrants make up at least 15% of the refugee population of Los Angeles and are less likely to be employed than primary migrants. In California as a whole, secondary migrants are 30% less likely to be employed than longer settled Indochinese refugees.

The Cost to Local Governments: Federal Responsibility and the Federal Response

Under Public Law 96-212 (the Refugee Assistance Act of 1980), federal reimbursement to state and local governments for their cost in providing cash and medical assistance to Indochinese refugees who have been in this country for thirty-six months or more was ended. This created a huge inequity in those states and localities which are home to large concentrations of refugees. The Select Commission Report recommended an extension of the April 1 deadline (8) and legislation is pending before these Subcommittees to extend it, but for the time being the federal government is not helping the areas where its policies have clustered refugees.

Instead, State and county governments are picking up this considerable financial burden. Nationally, the vast majority of those affected are Indochinese -- about 154,000 of whom have been here beyond the 36 month deadline.

The new eligibility standard will cost the State of California and certain of its counties about $30 million through June 30, 1982. It will cost Orange County alone $2.5 million over the next eighteen months because a fourth of the more than 20,000 refugees on cash assistance residing in the County were immediately cut off from federal aid and more will become ineligible for federal aid every day as they reach the 36 month limit. Those refugees who meet eligibilty standards will be transferred from the Refugee Cash Assistance program to the federal AFDC program, non-federal AFDC or County-funded General Relief programs. County welfare expenses will rise by about 6% a month, including a $233,000 expected increase in the County General Relief program which is already in severe financial distress.

The cost in Minnesota, which has the second highest concentration of Indochinese refugees affected by the 36 month rule is estimated at $28 million thorugh June 30, 1982. Some states, like Texas which has almost the same refugee concentration as Minnesota, do not have any locally-funded public assistance programs. Refugees who do not qualify for regular state-supported programs in such states will be on their own, often without language or employment skills.

The numbers of refugees -- and counties -- affected can only increase as the recent waves of Cuban and Haitian immigrants reach the 36-month cut-off point.

Community Response

Orange County has responded to increasing flows of refugees in a fair and humane manner, despite its own rising unemployment rate, high inflation and acute competition for low-cost housing, health care and unskilled jobs. Still, there are many in Orange County who believe that refugees are receiving unfair, preferential treatment and language and cultural differences only heighten suspicion and mistrust in the community.

The impact of refugee flows on the cities of Orange County, the school districts and the existing social services has been enormous. For example, strains on the already inadequate supply of affordable housing are increasing. The federal government defines a rental housing vacancy rate of less than 5% as constituting an emergency. Orange County's rate is less than 2%. According the the Orange County Housing Authority, the County is falling about 10,000 housing units short of its annual projected needs. Section 8 Housing Subsidies are being used to capacity and waiting lists for assisted housing are substantial.

Employment has also been a problem. The 1974 ahd 1975 refugee influxes included a high percentage of workers whose skills and educating allowed them to be quickly assimilated. More recent immigrants, however, are from rural areas and do not have skills that are immediately applicable to U.S. labor needs.

Three-quarters of the refugees classified "employable" on public assistance in Orange County need to learn English before they can go to work. More than 80% of all the refugees in Orange County cannot speak English. They have made efforts to take advantage of English as a Second Language (ESL) and vocational programs offered through CETA, VOLAG's, and local school districts, but most of these are filled to capacity and some have four to five month waiting lists.

The need for special instruction also applies to immigrant children. Orange County schools currently enroll more than 9,600 Indochinese refugee students in Kindergarten through twelfth grade. The high schools estimate that 94% of the Indochinese refugee student they have received spoke no English when they enrolled. Many could not read or write in any language. The school district has had to add bilingual teachers, special Indochinese language materials, linguists and counseling services for these students.

Conclusions

To arrive at solutions to the problems that are undeniably caused by the influx of refugees to the United States, we need to know what is fair and what is humane. I believe that the solution has two parts. First, what should be done for refugees already in the United States? Second, what should be done about future refugee situations?

(1) Federal Responsibility for Clusters of Refugees

We must recognize that refugees have a continuing impact on communities where they reside. They do not all assimilate within arbitrary federal time limits, nor is the "fault" of a community that all refugees residing within its borders do not become gainfully employed within an arbitrary time period. Some will never be self-sufficient because they are ill or too old to learn to support themselves.

I believe that the federal government needs to extend the Refugee Cash Assistance program for refugees who have been in the U.S. more than 36 months. I also think that we need to consider providing "Impact Assistance" to counties and local governments receiving large concentrations of refugees in order to help offset the education, job training and job development, public health, housing and public assistance costs incurred aiding refugees. One advantage of the intentional clustering of refugees is the opportunity for coordinated needs assessments and planning for effective services, but this is not an advantage where the funds to address identified needs are not available.

The federal government must consult with local governments on resettlement policies. It should also establish a federal clearinghouse to compile data and promote the exchange of resettlement information and expertise different levels of government.

In March, I was forced to write to President Reagan protesting the abdication of federal responsibilities for refugees in my region. In that letter, I pointed out that " [s]ince the Administration disagrees with the view that the Federal government should accept responsibility for financial costs now imposed upon state and local governments as a direct result of Federal immigration policy, I have no alternative but to request that [the President] halt the flow of Indochinese refugees into the United States or at least into inundated areas, like Orange County." I also called for an end to the "cluster concept," which encourages secondary migration of refugee resettlers to such areas, so long as there is not financial compensation for areas receiving the impact of these clusters of new residents with their costly special needs.(9)

The Office of the President advised me that it was looking into refugee policy and would refer my letter to another office, but I have received no substantive response.

(2) International responsibilities and prevention of refugee situations

The Commission reports points out that refugee problems cannot be solved by the United States working alone. It says:

> "[W]e are aware of the fact that we live in a shrinking, interdependent world and that world economic and political forces result in the migration of peoples. We also are aware of how inadequately the world is organized to deal with the dislocations that occur as a result of such migrations. None of the great international issues of our time -- arms control, energy, food or migration -- can be solved entirely within the framework of a nation-state world. . . . That is why we begin our recommendations with a call for a new emphasis on internationalizing world migration issues. Since many, large-scale, international migrations are caused by war, poverty and persecution within sending nations, it is in the national interests of the United States to work with other nations to prevent or ameliorate these conditions."(10)

The Report continues:

> "The American people have demonstrated that they are willing to do what must be done to save a portion of the world's refugees from persecution and sometimes even from death. . . . But it is impossible for the United States to absorb even a large proportion of the 16 million refugees in this world and still give high priority to meeting the needs of its own poor, especially those in its racial and ethnic minorities." (11)

Refugees have tremendous impact on international stability. Refugee flows into Thailand from Vietnam currently threaten the stability of the Thai government. An unexpected flow of refugees can completely alter a carefully arranged development program in a lesser developed country. Continuous emergency relief and decades-long temporary measures (as were employed with the Palestinians) have created tremendous problems.

No one prefers to be a refugee. No one prefers to be exiled from his or her homeland. The most desirable outcome for refugees is voluntary repatriation to their homelands. This is often impossible, not only for political reasons, but also because their native countries are usually experiencing severe economic problems as well. The second preferable outcome for most refugees is settlement in their country of first asylum. The country of first asylum is usually closer in climate, geography, language and culture than most alternatives, but similiarly may be politically or economically unable to accept refugees permanently. .

The least desirable resettlement alternative is resettlement abroad. Both politically and economically, faraway resettlement is far more difficult than providing care and maintenance overseas.

It makes sense to assist not only countries of first asylum, but also countries experiencing emigration where this is consistent with our other foreign policy aims and does not have the effect of rewarding repression. Many refugees leave not only because of fear of persecution, imprisonment or death, but because of problems such as food shortages and lack of opportunities at home. Former Vice-President Mondale speaking at the Geneva Conference on Refugees in July of 1979, suggested that the United States consider linking some development aid to third-country resettlement of refugees. Some third country resettlement of Southeast Asian refugees has occured in African nations.(12)

We also have to look at ways to help regions experiencing refugee migrations to assume their responsibilities. Rejection of the refugees by Malaysia and other Southeast Asian nations represents a breakdown in regional responsibility of unprecedented scale. I have introduced legislation to set up a facility in connection with the Asian Development to resettle refugees more equitably.(13) This is a long-term solution to a problem in a specific area, however.

Refugees are a world responsibility and a national responsibility. The are not the sole responsibility of the towns and counties where the breakdown of world and national responsibility have stranded them. I urge the Subcommittees in their examination of the Select Commission's report as it applies to refugees to keep this in mind. I urge you to consider legislation which will require resumption of federal financial responsibility for the refugees in this country who are not yet self-sufficent and who may never be self-sufficient. I urge you to look at the world situation and to help prevent the conditions that force people to become refugees.

References

(1) United States Committee for Refugees, "Who Helps the World's Refugees?," October 10, 1980, as adapted in Commission Report, page 24.

(2) Commission Report, page 6

(3) Commission Report, pages 2 and 3

(4) Commission Report, page 9

(5) Commission Report, page xxiii

(6) Robert E. Marsh, Publications Staff, Office of Research and Statistics, Office of Policy, Social Security Administrtaion, "Socioeconomic Status of Indochinese Refugees in the United States: Progress and Problems," Social Security Bulletin, October 1980, page 20

(7) Robert L. Bach, Secondary Migration of Indochinese Refugees to Los Angeles, California, The Brookings Institution, December 1979.

(8) Commission Report, page xxiii

(9) letter from Congressman Jerry M. Patterson to President Reagan, March 30, 1981 (Attachment A)

(10) Commission Report, page 4

(11) Commission Report, page 10

(12) Barry Stein, Michigan State University, CRS Workshop "US Foreign Policy and the International Refugee Crisis," May 1981

(13) H.R. 2850 (Attachment B)

Attachment A
written testimony
of Congressman Jerry M. Patterson

[illegible]

COMMITTEE ON
INTERIOR AND
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March 30, 1981

The Honorable Ronald Reagan
The White House
Washington, D.C. 20500

Dear Mr. President:

Last week, the Department of Health and Human Services testified against H.R. 2142 at a House Immigration and Subcommittee hearing. H.R. 2142 would postpone the effective date of the 36-month limitation on full Federal funding of certain cash and medical assistance for Indochinese refugees. This bill would provide temporary relief to state and local governments who must otherwise pick up a substantial part of the public assistance costs for those refugees as of April 11, 1981.

I need not describe the tensions, hostilities and, of course, the severe financial burdens created in many California communities as a result of the extraordinarily high proportion of Indochinese refugees resettled in our area. Orange County for example, has less than one percent of the national population, but nearly ten percent of the Indochinese refugees.

Despite overwhelming testimony in support of extending the reimbursement deadline, the Department chose to ignore the equities and oppose H.R. 2142. Since the Administration disagrees with the view that the Federal government should accept responsibility for financial costs now imposed upon state and local governments as a direct result of Federal immigration policy, I have no alternative but to request that you halt the flow of Indochinese refugees into the United States or at least into inundated areas, like Orange County. In addition, I urge the prompt consideration of policies aimed at discouraging secondary migration of Indochinese refugees to over-impacted areas after initial resettlement.

I would be happy to personally discuss this in more detail with you at your convenience. Thank you for your interest in this matter.

Sincerely,

Jerry M Patterson
JERRY M. PATTERSON
U.S. Congressman

cc: Secretary of State, Alexander Haig
Secretary of Health and Human Services, Richard Schweiker

JMP/sd

Attachment B Written Testimony of Congressman Jerry M. Patterson

I

97TH CONGRESS
1ST SESSION

H. R. 2850

To amend the Asian Development Bank Act with respect to the establishment of a special refugee settlement fund.

IN THE HOUSE OF REPRESENTATIVES

MARCH 25, 1981

Mr. PATTERSON introduced the following bill; which was referred to the Committee on Banking, Finance and Urban Affairs

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A BILL

To amend the Asian Development Bank Act with respect to the establishment of a special refugee settlement fund.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Asian Development Bank Act (22 U.S.C. 285 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 26. (a)(1) The President shall enter into negotiations with member countries of the Bank for the purpose of establishing a special refugee settlement fund, administered by the Bank, to assist regional developing member countries of the Bank affected by service as sites for temporary asylum for refugees from South and Southeast Asia prior to their resettlement in third countries.

"(2) The special refugee settlement fund should be available to help any regional developing member country which may wish to formulate development plans for regions of that country which that country judges to be suitable for permanent resettlement of refugees from South and Southeast Asia.

"(b) Upon the establishment of a special refugee settlement fund described in subsection (a), the United States Governor of the Bank is authorized to contribute to that fund on behalf of the United States 25 per centum of the total amount contributed by all countries to that fund, subject to the limitation contained in subsection (c) of this section.

"(c) In order to pay for the United States contribution provided for in this section, there is authorized to be appropriated without fiscal year limitation not to exceed $100,000,000 for payment by the Secretary of the Treasury.

"(d) The President shall encourage the World Bank and other appropriate multilateral development banks to establish funds similar to that described in subsection (a) of this section to aid in the permanent settlement of refugees from South and Southeast Asia in the countries in which they first obtain asylum or in other countries.".

○

PREPARED STATEMENT OF RALPH WATKINS, LEGISLATIVE DIRECTOR OF THE NEW IMMIGRANTS PROJECT OF THE UNITED CHURCH OF CHRIST

Senator Simpson, Representative Mazzoli, members of the subcommittees:

I am Ralph Watkins, Legislative Director of the New Immigrants Project of the United Church of Christ. Thank you for the privilege of submitting testimony. On behalf of the Office for Church in Society of the United Church of Christ, I am pleased to present to the Senate and House Subcommittees on Immigration this testimony in response to the report of the U.S. Select Commission on Immigration and Refugee Policy. The 1.8 million members of the United Church of Christ are the spiritual and familial heirs of the New England Pilgrims and later German immigrants who settled and shaped this land and bring an awareness of their heritage as immigrants and refugees to the current debate. The policies commended to the Church and to these subcommittees by the Directorate of the Office for Church in Society were developed by task force of representatives of church agencies responsible for immigrant and refugee work and of church members of major new immigrant groups. The views presented to these subcommittees represent that task force's restatement of long-standing United Church of Christ positions and newly-developed responses to new immigration issues.

The concern of the United Church of Christ for immigrants and refugees is in response to the witness of Biblical accounts of God's action in the world. Since Abraham and Sarah, people of faith have been people on the move. The prophetic voice of the Old and New Covenants proclaims that where a community shuts out the stranger, closes up its worship and common life against strangers, captives, and the poor, then suffering, decay, and alienation from God will result. In God's involvement in human history the welcomed stranger is the sign of renewal and life. We therefor approach immigration policy with an awareness that we cannot and should not control all of life, but must be responsive and responsible to God who judges peoples and nations by his righteous will.

The United Church of Christ has long been actively involved in meeting the needs of immigrants and refugees. The Congregational Home Mission Society conducted aid programs for immigrants as early as 1880. The United Church of Christ participates in refugee resettlement through Church World Service, which in 1980 arranged sponsorships for 33,655 statutory refugees and over 8,000 Cuban refugees, in Dade County alone. The interest of the United Church of Christ is practical as well as theologically based.

We are grateful for the work of the Select Commission, both in its research and its discussion of the issues. While we do not endorse all the recommendations, we welcome them as a catalyst and guide for public debate and consideration. We urge these subcommittees to study the recommendations critically, and to consider them from a perspective of moral values, not solely the perception of interested groups. We offer our views on each of the major sections of the Select Commissions Final Report as a perspective or framework we hope will be useful to you in considering the information that is being presented on these issues.

I. International Issues

While the United States should have fair and generous immigration and refugee policies, it should not ignore the injustice and want that forces people to leave their homes. The Select Commission's recommendation that international negotiations on immigration should be undertaken must be addressed seriously if immigration policyis to embody genuine concern for immigrants as people. We call upon the Congress to make certain that if international issues cannot be embodied in revision of the Immigration and Nationality Act that they be pursued energetically in other policy-making departments of the government.

The real problem in U.S. immigration is not immigrants but the conditions which force people to leave their homes. The United States cannot and should not attempt unilaterally to solve all the problems of the world, but surely there can be agreement that at least we should not make the situation worse. The Select Commission points to respect for human rights, economic aid, trade, and investment policies as key factors influencing the conditions which impel people to leave their homes. We call upon the Congress to pursue aid, trade, and investment policies that will encourage respect for human rights and promote just and stable economic development that recognizes the needs of the poor for economic opportunity.

II. Undocumented Immigrants

A. Employer Sanctions Proposal

The Select Commission did not adequately consider the problem of unlawful immigration from the point of view of the undocumented worker. If they had done so, they would have studied means for securing justice for undocumented workers. If the exploitation of undocumented workers can be curbed through their seeking protection of their own rights, one effect will be to discourage the widespread exploitive employment which now has such harmful effect on both undocumented and legal residents.

If undocumented workers can be encouraged to report violations of labor and other laws through the use of private tort damages or a special temporary residency status, exploitation might be deterred as effectively as by employer sanctions without the undesirable side effects. More consideration should be given to these alternatives than the Select Commission gave in its report.

We urge these subcommittees to view the problem of undocumented immigration from the perspective of the undocumented workers, and not exclusively from the point of view of U.S. citizens.

The Select Commission did not adequately consider the discriminatory impact of the proposed employer sanctions. The General Synod of the United Church of Christ in 1979 opposed the adoption of employer sanctions, and the Select Commission has not presented convincing evidence that the inherent drawbacks of sanctions can be overcome. The most serious objection is that of the U.S. Civil Rights Commission, the encouragement of discrimination against some ethnic groups. While the Select Commission expects an identification card to eliminate this problem, the Civil Rights Commission cautions that even with strict enforcement a card system will still be susceptible to discrimination. We therefore urge these subcommittees to consider the harmful effects of employer sanctions when evaluating alternative measures.

B. Legalization

The Select Commission's proposal for a legalization program is well-intentioned but flawed, especially in its recommendation that the program be delayed until other enforcement measures are implemented. The three main reasons for legalization are administrative need, avoiding the disruption of uprooting settled families, and avoiding continued enforcement of a law which is admittedly unfair.

Enforcement of a revised law will be easier if administrators can begin with a clean slate. The smaller the number of those out of status, the smaller the task of enforcement. Especially in a time of budget restrictions it seems prudent to reduce the size of the problem of administration.

The uprooting of families who have settled in the u.S. would not only be cruel to them but also disruptive to the communities in which they live. In view of the contributions they have made and their lack of malice in entering originally, deportation seems unnecessarily unkind.

The third reason for a generous legalization program is that deportation of those who entered in violation of the old law is in reality delayed enforcement of a law which is admittedly unfair. Many of those now here illegally could have entered legally but for the erratically discriminatory provisions of the Immigration and Nationality Act, especially the country quotas system. This rationale would support an eligibility date as close as possible to the effective date of the new law. We recognize the Select Commission's desire not to encourage a flow of illegal immigrants seeking amnesty, but we cannot favor enforcement of old, unjust provisions as a means for accomplishing this goal.

Finally, the proposed delay of legalization serves no purpose if there is a cutoff date for eligibility. The results of delaying a legalization program will be unnecessary continuation of enforcement problems and uncertain status for millions of people.

III. Admission of Immigrants

A. Numerical Limits

We do not favor or oppose any particular number, but believe that numerical limits should be related to population and employment goals. The Select Commission does not adequately address these matters in its report, citing no data that support its conclusion. Without a disciplined analysis of the relationship of immigration limits to population and employment goals, the setting of a world quota is subject to the influence of prejudice and fear. It is clear that neither the Select Commission nor the Congress wants this to occur, and we therefore call upon Congress to make clear the relationship of limits to goals and provide guidelines for review of immigration limits which will assure that they continue to serve those goals as other conditions change.

B. Separating Family from Other Categories

A major reason for our long opposition to national quotas is that they interfere with the operation of the preference system, particularly in the immigration of family members. Separation of family member entries seems a prudent means of assuring that family reunification can proceed without competition from other provisions, and we therefore support its consideration.

C. Expansion of Family Categories

The Council for Christian Social Action of the United Church of Christ in 1958 welcomed the improved treatment of illegitimate and adopted children. The expansion of family preferences proposed by the Select Commission is a welcome recognition of the value of extended family relationships, and we support it.

D. Changes in Per-Country Limits

The United Church of Christ's long opposition to national quotas is based on the fact that they "judge an individual by birthplace rather than merit," as the Council for Christian Social Action stated it in 1958. We welcome the proposal to abolish per country limits as they apply to family members. We are not convinced that there is a reason for retaining them in other categories sufficient to overcome their objectionable qualities.

National quotas discriminate on the basis of national origin. Surely not all applicants for immigration can come, but it is offensive to make the choice among equally entitled applicants dependent on the accident of their country of birth.

A national quota system of any kind will tend to interfere with the operation of other provisions of the law, as the current backlogs of family members demonstrate. If the "seed immigrant" category will effectively select immigrants whose entry is beneficial, it is unwise to enact a system which will frustrate that selection in an erratic pattern.

Finally, there is in the argument that the immigrant stream should not be dominated by any one group the danger that we are devaluing other cultures and choosing to permit only such small numbers that any foreign culture will be overwhelmed by the dominant culture quickly. Surely this is not the Commission's intent, but rather the wide distribution of the availability of the opportunity to seek a new life in America. We question whether per country limits are needed to serve this purpose. We call upon the Congress to abolish national quotas in revising the immigration law.

IV. Refugees

We support the present definition of refugees. We urge these subcommittees to consider that persons fleeing war or natural disasters be considered eligible for entry also, and urge consideration of a flexible provision in the law. The provisions in Canadian law might be a good example for consideration.

V. Non-Immigrant Categories

We oppose the expansion of the present H-2 program or the creation of a new temporary workers program. It is not just to profit from the labor of others while denying them security of residency. The injustices of the "Bracero" program must not be repeated. We fear that protection of workers' rights cannot be effective without a vastly greater enforcement effort than either taxpayers or employers are willing to support. We support the recommendation of the Select Commission not to expand the H-2 program.

VI. Revisions of I.N.S. Structure

We welcome these proposals to more effectively protect for aliens the basic due process of law which we demand for citizens. The proposed standards for searches, arrests, and detentions are long overdue efforts to treat others as we would want to be treated. This is especially important when we remember that a person arrested for suspected illegal entry may be a citizen. Constitutional rights cannot be denied on a suspicion that a person is not a citizen, or no rights will be secure from the overly suspicious. We call upon the Congress to pursue these changes recommended by the Select Commission.

VII. Grounds of Exclusion

We favor the reduction of exclusionary provisions of immigration law to those genuinely necessary to protect legitimate interests. In particular, we oppose exclusion based on sexual orientation, handicap, or criminal record. Where there is a genuine danger there should be an exclusion, but we oppose exclusion based on prejudices or fears. It is unfortunate that the Select Commission did not provide more clear guidance on this point, but we urge you to place the burden for establishing an exclusion on those who propose it. This would conform to our bias in favor of personal liberty, and our suspicion of lists of outcasts.

In summary, we favor a critical reading of the Select Commission Final Report. We urge that the Congress take seriously the causes of immigration and refugee movements, that Congress legalize the status of undocumented persons and seek ways to prevent a recurrence of exploitation. We oppose a general system of employer sanctions and call upon the Congress to more carefully consider the full costs and hazards, and compare these with less radical alternatives. We urge a clearer definition of the relationship of numerical limits to population and economic goals, and an end to the dysfunctional national quotas. We support the broader definitions of family and an increased flexibility in the definition of refugees. Finally, we favor improving the standards of administration of justice for immigrants and an end to discriminatory exclusions.

Thank you for considering our views. We would be happy to respond to any questions you may have. We would like to participate in future hearings, if possible, and will be working with other church groups both to study immigration issues and to keep our members informed of legislative developments.

ADDITIONAL REPORTS AND LETTERS

Michael S. Teitelbaum

RIGHT VERSUS RIGHT: IMMIGRATION AND REFUGEE POLICY IN THE UNITED STATES

There is now a growing realization that immigration and refugee issues may prove to be among the most important and troubling world problems of the next decade. The recent large flows of refugees or expellees from Indochina, Afghanistan and Cuba, all typically treated as short-term crises, instead may be harbingers of long-term trends of profound proportions. The same may be said for the accelerating trend of international migration, both legal and illegal.

Control over entry by non-citizens is generally considered one of the two or three universal attributes of national sovereignty; no government has ever explicitly abrogated this sovereign right, although on occasion a state has asserted the right of its citizens to enter another. Hence it is evident that problems of international migration, which are already large and of increasing magnitude, go to the heart of our collective definition of modern nation-states and of relations among them.

Immigration and refugee policy is of special and rapidly growing political importance in the United States. The debate is an increasingly unpleasant one, with anti-immigrant and anti-refugee sentiments apparently strong and growing. The most recent national poll on the subject of refugees showed only 19 percent supporting President Carter's decision to double the admission of Indochinese refugees to 168,000 each year, while 46 percent actually wanted a reduction from the previous level of 84,000 per year. In a later poll, 91 percent of the sample supported "an all-out effort to stop the illegal entry into the United States of 1½ million foreigners who don't have entry visas" and 80 percent wanted to "reduce the quotas of the number of legal immigrants who can enter the U.S. each year."[1] In 1977, the Carter Admin-

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[1] Roper Poll, September 1979 and June 1980.

Michael S. Teitelbaum is Program Officer at the Ford Foundation. He was Staff Director of the Select Committee on Population, U.S. House of Representatives, from 1977 to 1979, and previously on the faculties of Oxford University and Princeton University. This article reflects the personal opinions of the author and not those of the Ford Foundation.

istration made a set of limited proposals that promptly dropped out of sight in the Congress. Now a national commission chaired by Theodore Hesburgh and including strong congressional representation is scheduled to come up with a new analysis and recommendations in early 1981. The problems can hardly fail to be faced in some fashion early in the next Administration.

The many critics of current U.S. immigration policies cannot be simply dismissed as xenophobic restrictionists. Even unthreatened and non-xenophobic people with progressive and humanitarian instincts differ greatly, sometimes vituperatively, in their perceptions of and prescriptions for American immigration policy. In large part this is because the debate is a contest of "right" versus "right." Excluding the kooks on the fringes, all sides advocate human rights and justice; none supports persecution and injustice. The disagreement is about which basic rights have precedence over which other basic rights; consensus in such a setting is, unsurprisingly, elusive.

II

Extensive international migration is far from peculiar to our time, but in two important aspects the modern epoch is unique. The first is the enhanced importance of the nation-state in the twentieth century; throughout most of human history, national boundaries (where they existed) were far more permeable to the temporary ebb and flow or permanent movement of peoples than they are today.

The second is the rapid increase in the size of human populations, which has magnified greatly the potential for mass movements across borders, and led to the exhaustion of relatively open spaces for new occupation. In the post-World War II period the rapid rise of population in the developing countries has greatly outstripped the rates of increase that prevailed in Europe during its most rapid period of growth and migration (chiefly to America).[2]

A further new factor is the revolution in international communication and transportation. Modern communications have brought the relative attractiveness of life in the developed world to the attention of quite remote populations in the developing world, and the speed and availability of international travel have sharply reduced the barriers to international movement. The same modern communications have brought vividly before the world's conscience the suffering of refugees on the high seas or in hastily erected encampments, suffering of which most of us would have been unaware in the past.

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[2] At its peak growth during the latter part of the nineteenth century, the population of Europe was doubling every 70 years or so, as compared, for example, to doubling times of only 20-25 years for Mexico and Central America today. The total outflow from Europe between 1840 and 1930 numbered at least 52 million, or 17 percent of the estimated 1850 population of about 310 million.

In addition to these broad historical trends, there is general agreement that the world of the 1980s is a less stable place, both in political and in economic terms, than it has been for much of the postwar period. Domestic or international conflicts may produce real or only pyrrhic victors, but they always produce refugees. Increasing strife, coupled with populations that are today more than twice as large as those of 1950, portends burgeoning numbers of refugees seeking asylum in the coming decades.

The United States is a nation of immigrants, and most of us look with pride upon the invigoration and pluralism that immigrants continue to provide. We have not fully lived up to the poem inscribed on the Statue of Liberty, but the concept of a melting pot of many national origins, however lumpy we know it to be in practice, is still an American ideal. Today, however, the U.S. situation is unique both in world terms and in terms of our own history, by reason of five central facts—and one near-certain projection—that are not always widely grasped:

1) This country is by far the world's largest receiver of refugees and immigrants for permanent settlement; indeed it accepts on the order of twice as many as the rest of the world combined.

2) Immigration and refugee flows to the United States in the late 1970s were at or near the highest levels ever experienced, including the period before immigration was first broadly restricted in the 1920s.

3) There is much dispute as to the numbers of illegal immigrants in the United States, but no responsible group believes there are fewer than several million, and the consensus range is from four to six million as of the mid-1970s. Of these, about 50-60 percent are thought to be from Mexico, with many other countries providing the rest.

4) While immigration reforms since 1965 have had the laudable intent of eliminating discrimination and promoting diversity among immigrants, the reality has turned out differently. The actual working of the law and the sharp increase in illegal entry have produced an unprecedented concentration among a single linguistic group—Spanish-speakers.

5) There is every indication that the pressures of unemploy-

ment, poverty and political instability in much of the developing world will increase greatly in the 1980s and 1990s, and despite conspicuous possible exceptions will tend toward an even greater concentration of immigrants in the groups already dominating current flows.

6) Enforcement of American immigration law by the Immigration and Naturalization Service (INS) is remarkably poor; under present circumstances the chances are very low of even detecting, much less apprehending, violators who show a little persistence.

Each of these points warrants brief elaboration, to be followed by discussion of how and why they are at once accepted and perceived quite differently (even emotionally) from different perspectives. The concluding discussion concerns the policy implications of both the facts themselves and the political realities of divergent perspectives.

III

The United States is by far the world's largest receiver of refugees and immigrants for permanent settlement. In 1978, the last year for which official statistics are available, over 600,000 legal immigrants and refugees were admitted for permanent residence in the United States.[3] (The 1980 figure seems certain to rise to 700–800,000 or even higher under current policies.) The 1978 total represents not only the largest number accepted by any nation in the world in that year, but perhaps twice as many as were received by all other countries combined.[4]

In addition to the legal flow, the United States is currently experiencing a large "illegal" or "undocumented" influx.[5] As with all clandestine processes, it is almost impossible to obtain accurate data on such migration. While there are extreme claims on both sides, most observers would agree that the annual inflow of illegal migrants is considerably larger than that of legal migrants and refugees, that the return flow is also considerably larger, and that the net inflow (i.e., those remaining after return migrants are subtracted) is perhaps roughly equal to the net legal flow.

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[3] This figure excludes those entering the U.S. under a small legal temporary-worker program. In continental Western Europe, by contrast, the overwhelming bulk of legal entry in recent decades has been under such temporary-worker ("Gastarbeiter") programs; in very few cases are such entrants expected to become citizens. In the United States, of course, it is assumed that the great bulk of those admitted for permanent residence eventually will become U.S. citizens.

[4] A minor caveat is in order for the specific year 1978; in that year the People's Republic of China, not ordinarily a country of immigration, admitted an unknown number of Vietnamese nationals of Chinese origin on a one-time basis.

[5] A word on nomenclature is in order here. Persons present in the United States in violation of immigration laws are described by a variety of terms, including illegal aliens, undocumented workers, and illegal immigrants or migrants. None of these several terms is entirely appropriate. The term "illegal" is offensive to some who believe it attributes blame to the victim. The term "undocumented" is offensive to others, who consider it a euphemism. The term "alien" has other-worldly connotations to some. The term "immigrant" assumes permanence of settlement that may not occur, and the term "migrant" has a connotation of non-permanence that may not be true. These various imperfect terms are used interchangeably in this article, with no offensive connotations intended.

Thus, a statistically conservative conclusion would be that in the past several years the United States has been receiving a net inflow, legal and illegal, amounting to at least one million persons per year—a minimum of 600,000 legal in-migrants, less perhaps 100,000 legal out-migrants, plus a comparable net flow of illegal migrants. The 1980 figures no doubt will be larger still.

Net immigration on this scale is at or near the highest levels ever experienced in American history. In the 1901–10 decade, the previous peak, legal immigration averaged 880,000 annually, and there was little known illegal entry. With a present U.S. population more than double what it was then, the current inflow represents a considerably smaller numerical ratio. On the other hand, the current record-low fertility of the U.S. population (lower even than in the depression years of the 1930s) means that international migration is accounting for a greater share of total population increase than ever before. If the above estimate of total annual net immigration is near the mark, it represents at least 40–50 percent of annual U.S. population change.

Estimates of the number of "undocumented" or "illegal" migrants presently in the United States range from as low as 2 million to as high as 12 million, with most responsible observers coalescing on a range of 4–6 million as of the mid-1970s, probably with substantial increases since then.[6] The absence of firm evidence has made this subject a popular one for demagogues. Some have tended to exaggerate the numbers radically and speak of a "silent invasion"; others have sought to downplay the magnitude, claiming that it is insignificant in size and impact. But the consensus estimate of 4–6 million as of five years ago is, by any measure, very large and important.

The concentration of the modest enforcement efforts of the Immigration and Naturalization Service along the Mexican border has given rise to a popular impression that almost all illegal migrants are Mexicans. Most objective observers believe that the Mexican percentage is closer to 50–60 percent, with the other 40–

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[6] *The New York Times* (January 16, 1980, p. A1) quotes unnamed "authorities in the State Department" as estimating that as of 1980 "the number of illegal aliens in the United States is at least 10 million, and these ranks are swelling at a rate of about two million a year." The 4–6 million range as of the mid-1970s has been accepted as reasonable by such responsible sources as former INS Commissioner Leonel Castillo, the Select Committee on Population of the U.S. House of Representatives, and senior demographers at the Bureau of the Census.

50 percent coming from the Caribbean, Central and South America, Asia and Europe. Mexico is by far the largest single source country, but the problem is wider.

American immigration flows have come to be dominated to an unprecedented degree by immigrants speaking a single foreign language—Spanish—contrary to the intention of recent immigration reforms to encourage all forms of diversity and pluralism. The 1965 reforms of the Immigration and Nationality Act did away at last with the blatantly racist nature of the quotas developed during the 1920s. Under the 1965 and 1976 reforms, each individual nation now has an equal ceiling of 20,000 potential immigrants per year, which however does not include those who are eligible for admission because of immediate family ties to U.S. citizens. Under these laws the *national* diversity of immigration to the United States has increased dramatically in the past decade.

Linguistic diversity is another matter. The 1965 Act also provided for a regional ceiling of 120,000 immigrants from the whole Western Hemisphere, and for a ceiling of 170,000 from all other areas together. In practice, however, the family ties provision has meant that the number of legal immigrants from Hemisphere Spanish-speaking countries has steadily grown and has itself usually exceeded the regional ceiling substantially.[7] More important, the recent heavy influx of illegal migrants has been heavily concentrated, as we have just noted, among Spanish-speakers. The INS reports that, in the period 1968–77, approximately 35 percent of all legal immigrants to the United States were Spanish-speaking. If one adds to this figure plausible estimates of Spanish-speaking illegal immigrants, it becomes clear that over the past decade perhaps 50 percent or more of legal and illegal immigrants to the United States have been from a single foreign-language group.[8]

Such linguistic concentration is quite unprecedented in the long history of U.S. immigration. While there were substantial concentrations of a particular language group in past decades (e.g., 28 percent German-speaking in 1881–90 and 23 percent Italian-speaking in 1901–10), previous immigration flows generally were characterized by a broad diversity of linguistic groups ranging from Chinese to Polish to Spanish to Swedish. Furthermore, those concentrations that did occur proved to be short-lived.

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[7] The unpredictable, and sometimes large, numbers of Cuban refugees admitted under special arrangements in particular years make it difficult to choose a "normal" year. But in 1977, for example, the total of legal immigrants from the Western Hemisphere was about 223,000, of whom perhaps 30,000 (from Canada, Jamaica, Haiti and Brazil) were non-Spanish-speaking. Mexico, the largest single source country, was responsible that year for 44,079 legal immigrants, of whom more than half came under the family ties provision. (For unrelated and probably temporary reasons, the 1978 figures, the latest available, for Mexico were even higher—see footnote 10.) By comparison, all of the countries of Africa, taken together, sent an average of only about 7,000 legal immigrants per year to the United States during the past decade.

[8] One of the reviewers of this article, Dr. Charles Keely of the Population Council, has reminded me that there is also a very high concentration of his fellow Catholics among current immigrants and refugees from Latin America and Asia, and suggests that this pattern, if continued, will engender important social dynamics within the Church and its hierarchy in the coming decades.

The pressures for international migration can be expected to increase greatly over the coming decades. Moreover the trend in U.S. immigration flows is almost certain to be toward even greater concentration among already predominant groups. According to the International Labour Organization, the developing world will have to generate between 600 and 700 million new jobs in the next 20 years merely to absorb the rapid growth in its labor force and keep its unemployment rate from increasing. This number of new jobs is more than presently exist in the whole of the industrialized world taken together.[9]

Even more to the point are the high rates of population increase in prospect for almost all the developing countries that in recent years have been primary sources of migrants to the United States.[10] With the exceptions of Jamaica and Cuba, all of these nations can expect population growth ranging from a third to nearly 90 percent over the next 20 years. While measures to limit population growth could have an increasing impact on longer-term population trends in these countries, the great bulk of these 20-year increases are foreordained by births that have already taken place.[11]

In rough terms one may assess the prospects for emigration pressures in four groupings of countries that have been leading sources of legal immigrants in recent years:

The first group, developed or near-developed countries with low rates of population increase—e.g., Canada, Italy, the United

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[9] International Labour Organization, *Labour Force Estimates and Projections, 1950–2000*, Second Edition, Volume V, (Geneva: 1977), Table 6.

[10] In Latin America and the Caribbean, prominent source countries include Mexico (92,367), Cuba (29,754), the Dominican Republic (19,458), Jamaica (19,265), and Colombia (8,272*). In Asia, they include the Philippines (37,276), South Korea (29,288), Taiwan (21,315), and India (20,753). Finally, among developed countries are the United Kingdom (14,245), Canada (12,688*), Portugal (9,657*), Greece (7,838*), and Italy (7,510*). The numbers in parentheses are the latest tabulations of legal immigrants by country of origin available from the INS, which is so tardy in its reporting that these are 1978 figures (1977 when asterisked). In addition, there were in 1978 88,543 Vietnamese refugees whose status was adjusted to immigrants.

[11] Examples of projected 20-year population increases are 89 percent for Mexico; 64 percent for the Philippines; 58 percent for both Colombia and the Dominican Republic; 45 percent for India; 34 percent for Taiwan and South Korea; and 27 percent for both Jamaica and Cuba. In contrast, the comparable figures for developed countries are: Canada, 21 percent (including substantial immigration); Portugal, 17 percent; Greece, 10 percent; Italy, 7 percent; and the United Kingdom, 1 percent. All figures are rounded and based on data from the United Nations and the World Bank, as compiled in Population Reference Bureau, *1980 World Population Data Sheet*, Washington, 1980.

Kingdom, Portugal and Greece—seem unlikely to experience great continuing emigration pressures, barring political or economic upheavals.

In the second group of countries, large developing nations from areas other than Latin America, India deserves special mention. Although India has no long history of large-scale out-migration here (as it has to the U.K.), the numbers in recent years have been substantial and a "critical mass" may be emerging that could lead to increased flows, especially from family ties. India's population is projected to increase by 45 percent, or 300 million, over the next two decades. Depending on its economic and political fortunes, it may or may not produce heavy pressures for immigration to the United States. India is officially English-speaking, albeit with multiple regional languages.

The third group consists of a number of smaller Asian developing countries with close historical ties to the United States and with varying levels of political instability—e.g., South Korea, the Philippines, Taiwan and Vietnam. Most already have more or less well-established patterns of out-migration to the United States, with the Philippines and South Korea routinely oversubscribing available visas. Threats of international hostilities, civil war or internal convulsions face many of these countries more or less vividly. If such developments were to occur, strong pressures would arise for admission of large numbers of refugees, as in the recent cases of Vietnam, Cambodia and Laos. English is a relatively popular second language in most of these countries.

It is the fourth group about which one can state with assurance that all indicators favor the rapid escalation of pressures for out-migration to the United States. This group consists of the relatively contiguous countries of Latin America and the Caribbean, including Mexico, the Dominican Republic, Colombia and Jamaica. Most are predominantly Spanish-speaking (with obvious exceptions in Haiti, Jamaica and many small Caribbean islands), with generally little prevalence of English as a second language. Most of the countries in this group have long-established patterns of substantial out-migration to the United States; their rapid population growth and the high proportion of young people (typically 45 percent or more under age 15, as compared to 22 percent in the United States) portend daunting rates of labor force growth. As a study prepared at the Inter-American Development Bank puts the problem:

> Stated briefly and in comparative terms, the United States in its best year

> since the Second World War (1977) created four million jobs; but Latin America, with one-fifth to one-sixth the economic base (GDP) must from now to the end of the century annually create four million jobs, just in order not to fall behind in its present high rate of unemployment. Does anyone truly believe they can do this?[12]

Mexico, for example, is hard put at present to provide jobs and sustenance for its 68 million people, even with millions having emigrated already to the United States. Yet Mexico is projected to add more than 60 million to its population in the next two decades. Over the near future, 700,000 new jobs per year will have to be created if already high unemployment rates are not to rise, yet even optimistic official forecasts predict only about 350,000 new jobs per year.[13] Colombia, often considered one of the success stories of Latin America in attempts to lower rapid population growth, will nonetheless increase by over 15 million from its present 27 million by the year 2000. Unless there is great success in generating jobs for these additional millions, the already large pressures for illegal migration of Colombians to Venezuela and to the United States can be expected to increase accordingly.

Enforcement of American immigration law is remarkably lax by any standard of assessment. The open land borders of the United States have received far less enforcement attention than would be considered normal policing effort in any town or city. Although the INS concentrates the bulk of its small Border Patrol forces along the Mexico-U.S. border, during an eight-hour period there are on average only 350 border patrolmen assigned to this 2,000-mile unfortified perimeter—less than the normal force of police assigned to guard the U.S. Capitol and its office buildings, comprising in total 103 acres.

The entire fleet of INS aircraft used to survey the lengthy borders and coastlines of the world's leading producer of aircraft consists of three leased helicopters (one of which was downed and destroyed recently by smugglers or illegal aliens) and 28 Piper Cubs and Cessnas. The U.S.-Canadian border, thought to be an important entry point for illegal aliens from the Caribbean and Asia, is punctuated with many small road crossings where the only official presence is represented by a road sign requesting border crossers to kindly report to the nearest INS office.

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[12] "Urbanizing Latin America," paper presented by Robert W. Fox of the Inter-American Development Bank at the Global Conference on the Future, Toronto, Canada, July 21, 1980. The International Labour Organization projects labor force growth for Latin America of between 86 million and 95 million over the 20-year period 1980–2000. *Op. cit.* footnote 9, Vol. 3, Table 6.

[13] Peter H. Smith, *Mexico: the Quest for a U.S. Policy*, New York: The Foreign Policy Association, 1980, p. 25.

Enforcement of U.S. law regarding those entering legally on temporary visas is equally lax, both at ports of entry and internally. Of the more than eight million persons entering the United States on such visas in 1977, the archaic INS administrative system was unable to account for the departure of 15 percent, or over 1,200,000; no one knows how many of these stayed on illegally. Despite abundant evidence of widespread visa abuse by nationals from Caribbean countries (especially from the Dominican Republic), the State Department continues to issue "shopping passes" (known as annotated visas) that allow applicants unable to qualify for tourist or business visas to enter Puerto Rico only, for purposes of "furthering the inter-island economy." Yet once a person holding an annotated visa enters Puerto Rico, there is no effective mechanism in place to determine if he/she ever departs the island, or to bar a domestic flight from Puerto Rico to the U.S. mainland.

There is also considerable evidence that both the issuance and use of student visas have been subject to widespread abuse. Most Americans, even members of Congress, would be surprised to learn that profit-making technical training schools (e.g., for beauticians and auto mechanics) have been authorized by the INS to issue the Form I-20 that generally results in the immediate issuance of a student visa. Even the respectable non-profit education sector has seen the emergence of unscrupulous foreign student recruiters and a black market in visa forms, especially as small and financially strapped colleges have a harder time finding domestic students willing and able to pay high tuition fees.[14]

While in most countries it is a violation of law for employers to hire persons without legal visas or working papers, in U.S. law the so-called Texas Proviso specifically exempts employers from the legal proscriptions on harboring illegal aliens.[15] This bizarre provision, adopted in 1952 apparently at the behest of Texas agricultural interests, injects an obvious asymmetry into law; a person without proper papers is not permitted to obtain employment in the United States, but it is quite legal for his employer to employ him.

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[14] *The New York Times* of January 15, 1980 reported that these recruiters charge fees of up to 15 percent of first-year tuition payments, and that blank I-20 forms signed by U.S. college officials were on sale for $700 to $1500 on the black market in Iran. The president of as respectable an institution as Bennington College admitted to the *Times* that his college issued such blank presigned forms, which he "supposed it wasn't the moral thing to do."

[15] The Texas Proviso makes interesting reading: Any person who "willfully or knowingly conceals, harbors, or shields from detection or attempts to conceal, harbor, or shield from detection, in any place . . . any alien . . . not duly admitted . . . shall be guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding $2,000 or by imprisonment for a term not exceeding five years, or both, for each alien in respect to whom any violation of this subsection occurs: *Provided, however, that for the purposes of this section, employment (including the usual and normal practices incident to employment) shall not be deemed to constitute harboring.*" (Immigration and Nationality Act, Section 274(a), emphasis added.)

In addition, the substantial internal controls on resident noncitizens in most developed countries (e.g., compulsory annual police registration in Great Britain, and such registration coupled with identity papers in France and West Germany) do not exist in the United States.[16] Finally, the investigative staff of the INS, responsible for detecting, apprehending and processing several million undocumented migrants, numbers only about 1,000 persons nationwide.

In summary, the 2,000-mile Mexico-U.S. border and the 4,000-mile Canada-U.S. border are essentially porous, and the administration of visas for tourists, students, "shoppers," and other temporary visitors is such that anyone able to enter on such a visa can stay on permanently and obtain employment if so desired.

IV

Although a high level of emotionalism is characteristic of all sides of U.S. debates on immigration, most advocates would probably accept as factually correct the six propositions stated above. The differences center in part on other social and economic issues, but inextricably intertwined with these are deep underlying issues of political principle and political power, as well as the interests of special groups.

Ideologies, both coherent and incoherent, have long loomed large in American immigration policy. When the historic policy of openness was abandoned in the late nineteenth century, the first targets were Chinese; in 1870 their naturalization was forbidden, and a series of later measures culminated in the total exclusion of working-class Chinese. Then, in the 1920s, the first comprehensive immigration laws adopted by the Congress were blatantly and self-consciously racist, products of the political stirrings and pseudoscientific excesses of Know-Nothings, Eugenicists, and Social Darwinists. Two examples suffice: the laws essentially excluded all Asians (even in the 1950s the annual quota for Chinese immigrants was 105 and for Japanese 185;[17]) the quotas were deliberately designed to favor immigrants from Northern and Western Europe and to limit severely the number of immigrants from Southern and Eastern Europe, many of whom were Catholic or Jewish and deemed to be of "inferior racial stock." The 1952 McCarran-Walter reforms retained many of these features, added restrictions of a more political (anti-communist) nature, and shifted emphasis heavily toward reunification of families and toward the highly skilled.

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[16] Present U.S. law does require address notification by all aliens via completion of a postcard to be sent to the INS each January. While many aliens comply with this requirement, many do not, and there is no effort at enforcement.

[17] Presidential Proclamation 2980 of June 30, 1952, implementing Sections 201(b) and 202 of the McCarran-Walter Act.

The reforms adopted in 1965 represented a substantial victory over the discriminatory principles of the 1952 Act. The exclusionary treatment of Asians was eliminated entirely. Principles of fairness and pluralism in immigration policy were affirmed by allocation of an equal ceiling of 20,000 per year for each nation, whether or not it had been the source of substantial numbers of immigrants in the past.[18] In 1980 the Refugee Act eliminated the narrowly anti-communist tone of the McCarran-Walter definition of refugees and applied equal criteria to refugees from all forms of repression and discrimination.

Overall, then, the intention of legislative reform over the past 15 years has tended ideologically toward nondiscriminatory immigration policies favoring a plural mix of immigrants and refugees from diverse ethnic, political, national and racial groups. In recent years, various groups have pushed the case further, contending that a "right to immigrate" should be accepted as a part of individual human rights, seeking to redefine the term refugee to include "economic refugees" escaping poverty, or urging a vision of a new world order of open borders. Other arguments have turned on whether the United States should have a conscious policy as to its eventual overall population size, and if so the bearing of immigration on such a policy. That the United States should remain a plural society hospitable to immigrants from all nations is today seldom explicitly questioned; we have come a long way, both in principle and in practice, from the dark days of the 1920s. But it would be misleading to pretend that the prejudices of earlier times are totally dead, and they too are sometimes expressed in ideological terms.

Beyond (and often behind) such deep-seated arguments of principle or ideology are real differences of perceived political or economic advantage and cost among different advocates and interest groups. Some employers see large-scale immigration (and especially continued illegal immigration) as providing an opportunity to increase their profits by "disciplining" the work force as to wages, hours, conditions and productivity. Most labor leaders, not surprisingly, see the same phenomenon as undercutting the hard-won gains and future prospects of domestic workers. While some ethnic and religious leaders see large flows of immigrants of their own group as adding to their political influence and economic power, others of the same groups see such flows as threatening the achievements and social advancement of already resident members. Some leaders of other ethnic groups see such large-scale flows as threats to the status and welfare of those they seek to represent, while others see the new arrivals as potential political allies. Those who favor slowing the rate of growth of the population or of the labor force see accelerating immigration as frustrating that goal; those who favor continued or accelerated population or labor-force growth see immigration as compensating for the present low levels of U.S. fertility.

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[18] Initially countries in the Western Hemisphere were not subject to this 20,000 per country provision; this was changed by amendment in 1976.

Since the available evidence on the consequences of current immigration is weak, each advocacy group is able to find some form of nominally "scientific" corroboration for its own posture—provided too often by advocate-scholars whose research findings seem determined by personal ideological commitments. In such a setting, it is difficult indeed for the interested and concerned observer to distinguish truth from misrepresentation, and to assess the merits of alternative policy approaches. The remainder of this article therefore seeks to review available evidence on the costs and benefits of large-scale immigration as objectively as possible, with full attention paid to the limits and ambiguities of our knowledge, and to suggest at least the outlines of alternative policy approaches.

V

We begin by emphasizing that today's heated debate is concerned solely with *large-scale* immigration and refugee flows, of the magnitudes that have been experienced in the United States during the past several years, i.e., numbers on the order of a million or more legal and illegal immigrants and refugees per year, or nearly half of total population growth. Similar disputes do *not* arise regarding moderate levels of legal immigration such as those of the 1950s, which averaged about 250,000 per year and 10 percent of population growth, or those of the 1960s, which averaged about 330,000 per year and just over 15 percent of population growth. To the author's knowledge, no responsible group opposes continued immigration at such levels, which are moderate by U.S. historical standards, although admittedly very high by comparison with most other countries.

Historically, a primary motivation for a policy permitting or encouraging large-scale immigration into the United States has been the need for labor in a burgeoning continental nation with a rapidly expanding economy. For the immigrants, a prominent attraction of the United States (in addition to political and religious freedom) was the easy availability of jobs providing high remuneration by the standards of the sending countries.[19]

The question in 1980 is whether the contribution of large-scale immigration to the U.S. labor force continues to be as important and productive as in the nineteenth and early twentieth centuries, or whether in changed economic and technological conditions it no longer contributes substantially to the economy. A related question is whether large-scale immigration benefits some groups but has high costs for others, and if so how to balance these interests.

There can be little doubt that the millions of guest workers who migrated to some Western and Northern European countries in the 1950s and 1960s were an important factor in the economic miracle experienced by those countries in that period. In the face of a shortage of labor to staff the rapidly expanding economic structure, primarily in the Federal Republic of Germany, France and Switzerland, many governments chose to import temporary workers from labor-surplus countries such as Italy, Greece, Yugoslavia, Turkey, Spain, Portugal and Algeria, with the view that these workers would stay for only a year or two and then return to their home countries with accumulated savings and know-how that would make them more productive there. In the meantime, the intention was to encourage automation and higher productivity in the sectors employing such foreign labor so that it would not be required in the future.

As is well known, this "temporary" migration grew to be far more permanent than intended; at the present time, there are five million guest-workers and seven million dependents in Western and Northern Europe,[20] in spite of an almost universal policy shift in 1973 seeking to avoid recourse to foreign labor and to encourage return migration by those already present. The underlying reason for this policy shift in Western Europe was the increasing social costs of the guest-worker program that became visible in the late 1960s and early 1970s, although the proximate explanation given was fear of recession after the 1973 oil embargo and quadrupling of oil prices. There were also domestic political backlashes (including racial or ethnic antagonisms in France, Germany, and the Netherlands, and a national anti-immigration referendum in Switzerland that failed only narrowly). In short, as social and political costs grew while economic growth declined and unemployment increased, the short-term economic justification that underlay European immigration policy waned. Although a large proportion of the temporary workers remain (having in some cases resisted strong pressures for repatriation), their employment is increasingly in clearly defined areas and the trend is toward reduction rather than increase.

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[19] During the high unemployment years of the 1930s, legal immigration averaged only 53,000 per year—the lowest level by far of any decade after the 1820s.

[20] OECD, SOPEMI, 1980.

Similar economic forces led to sharp downward revisions in immigration quotas at about the same time in most other Western countries receiving large numbers of immigrants, e.g., Canada, Australia and New Zealand. The only exception to this pattern in the Western world has been that of the United States, in which the number of legal immigrants has actually increased substantially over the 1970s, as apparently has the number of illegal or undocumented immigrants.

A major question for future U.S. policy therefore arises: What are the impacts of current and prospective patterns of immigration on the U.S. labor market and economic system? Opinions on this subject range widely among labor economists and other experts. The predominant view is that while continuation of a significant flow of immigrants with scarce skills can represent an important contribution by filling gaps in the American labor force, there is no longer economic justification for large numbers of relatively unskilled and ill-educated immigrant workers and their dependents. In this view, the U.S. economy is now a highly advanced one in which relatively high or specialized levels of education and work skills are virtual necessities for productive employment. While jobs can be found by unskilled workers willing to accept low pay and poor conditions of employment (a maid in El Paso is said to earn $30–$40 per week, with no limits on hours worked and no social security or other benefits), a large pool of such workers contributes little to productivity. Indeed, in this view the fact that most illegal aliens are employed in low-skill occupations represents a self-fulfilling prophecy: the large number of compliant workers generates market demand for such labor by retarding the upgrading of wage and working conditions that would make the same jobs attractive to Americans and encourage investment in labor-saving technologies.

As to the future, projections of the balance of demand and supply of labor are clouded in uncertainty. It seems clear that the fertility decline in the United States since the 1960s will mean a tapering off of the rate of growth of indigenous young labor force entrants in the coming decades: specifically, the labor force is projected to still be growing by about 1.2 million per year in the mid-1980s, down from the recent annual increase of 1.5 million. However, if labor force participation of women continues to increase more rapidly than previously anticipated, as has been the case over the past decade, and if political and economic forces lead to a gradual increase in the average age of retirement, as seems likely, the native-born labor force of the United States may well expand more rapidly than projected.

On the other side of the supply-demand equation, there is consensus that it is quite impossible to predict the demand for labor in the U.S. economy beyond the next few years. Fundamentally this is true because no one is able to predict the future of the American economy as a whole, with uncertainties about energy, inflation and capital formation looming large. Moreover, the demand for labor is itself closely related to the supply. For example, if unskilled labor were to become relatively scarce, then its price would rise in relative terms, thereby encouraging mechanization of tasks otherwise performed by unskilled laborers, and also stimulating labor force participation by potential workers who under previous wage conditions found little work incentive as compared to other sources of support available to them.[21]

Under these circumstances of simultaneous uncertainty about both supply and demand, it appears to be beyond the realm of our capacity to predict accurately the tightness or looseness of U.S. labor markets very far into the future. Undaunted, some have tried nonetheless, and on the basis of their results have argued that much-expanded immigration is a necessity for future American economic growth.[22] Such efforts notwithstanding, there is no supportable evidence that U.S. labor markets require large-scale immigration now or in the coming decades, although periodic and objective reassessments must be made as conditions change.

[21] See, for example, Michael Wachter, "The Labor Market and Immigration: the Outlook for the 1980s," in *Staff Report Companion Papers*, Interagency Task Force on Immigration Policy, Departments of Justice, Labor and State, August, 1979, p. 222. Also, Vernon Briggs, "Mexican Workers in the United States Labor Market: A Contemporary Dilemma," *International Labour Review*, November 1975, pp. 351-58. Also, Michael J. Greenwood, "The Economic Consequences of Immigration for the United States: A Survey of the Findings," in *Staff Report Companion Papers*, *op. cit.*, p. 101.

[22] See, for example, Clark Reynolds, "Labor Market Projections for the United States and Mexico and Their Relevance to Current Migration Controversies," paper presented to the American Assembly on Mexican-U.S. Relations, 1979.

A different view—essentially a different philosophical stance—is taken by a minority of labor economists and other commentators, who hold that there exists a "dual economy" in modern industrial societies, which requires a substantial and growing number of low-paid and unskilled workers in the "secondary labor market." In this view, these jobs will continue to be necessary but so undesirable that they cannot attract enough members of the domestic labor force, no matter what their wages and conditions, and unskilled labor from abroad must therefore be imported to fill them.[23] Hence they see large-scale immigration of unskilled workers as a structural requirement of industrialized capitalist states.

A subsidiary issue is whether immigrants contribute to the productivity of the U.S. economy because they are more hardworking and energetic than are citizens of the United States. The legal immigrants in the 1950s and early 1960s were relatively well educated and highly skilled, and appear to have done well as measured by income, eventually surpassing the average income levels of members of the domestic population with equal educational attainment; the one exceptional group that did not do well economically was immigrants from Mexico, who were predominantly unskilled.[24] Unfortunately, there is no comparable evidence on the considerably different legal immigration flows of the late 1960s and the 1970s, as these must await data from the 1980 Census. Furthermore, legal immigration over the 1970s, as already noted, has been substantially augmented by illegal or undocumented immigration of perhaps the same order of magnitude. Since this latter flow appears to be largely unskilled and poorly educated, it would appear that immigration in the 1970s was increasingly concentrated in the groups least likely to do well.

To summarize, it is apparent that immigration can contribute substantially to economic welfare under conditions of rapid economic growth and low unemployment, as in the United States in the nineteenth and early twentieth centuries and in Europe in the 1950s and 1960s. Such benefits are far less likely to have occurred under the conditions that have prevailed in the United States since the early 1970s: low economic growth and high unemployment, especially among those with the lowest educational and

[23] A prominent example of this perspective may be found in Wayne Cornelius, *Mexican and Caribbean Migration to the United States* (Ms., University of California at San Diego, 1979). See also Michael J. Piore, *Birds of Passage*, New York: Cambridge University Press, 1979.

[24] Barry Chiswick, "The Economic Progress of Immigrants: Some Apparently Universal Patterns," in William Fellner (ed.), *Contemporary Economic Problems, 1979*, Washington: American Enterprise Institute, 1979.

skill levels. The predominant expert view, therefore, is that large-scale immigration of low-skill workers cannot be expected to contribute to overall economic well-being over the foreseeable future, though there is economic evidence favoring continued openness to persons with needed skills. (A few examples are technicians, nurses, computer programmers, and successful small business entrepreneurs. Note that such skills do not imply an "elitist" admissions policy based on levels of education alone; while literacy and numeracy do seem important to an individual's economic success in the advanced U.S. economy, there is actually a current surplus of Ph.D.'s and other highly educated professionals.) What is needed from an economic standpoint is a moderate flow that emphasizes individuals in fairly clear job categories.

As indicated above, a related economic question is whether large-scale immigration, whatever might be its contribution to aggregate economic performance, may contribute differentially to the economic well-being of different social groups. Here there seems to be a general consensus among economists that to the extent that there are beneficiaries of immigration, they are the immigrants themselves and the employers and middle-class consumers who tend to benefit from cheap labor in the industrial, agricultural, service and domestic sectors. The possible losers appear to be the lower-income groups of the U.S. population—relatively disadvantaged citizens and recent immigrants who are affected by a growing population of energetic and sometimes even desperate foreign workers willing to work under wage and working conditions that to domestic workers are unattractive but for the immigrants far exceed anything they have experienced.[25]

Despite emotional claims to the contrary, there is general agreement that only moderate direct displacement of labor occurs through one-on-one competition between citizen and immigrant for a particular job, since most citizens are unwilling even to apply for jobs with poor wages and working conditions. However, it is also generally agreed that large-scale inflows of unskilled and compliant labor tend to depress (or to retard improvement of) the wage and benefit conditions of the jobs that are the only ones available to many domestic labor force entrants, especially minorities, youth, women and recent immigrants.[26] Hence the pattern is predominantly one of indirect effects, through relative distortion downward as wages and working conditions in affected markets do not change while those in other jobs continue to improve.[27]

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[25] For example, the average hourly wage in the United States is currently five to ten times that of Mexico, and the prospects for employment in Mexico are far poorer than in the United States. From the point of view of an unskilled Mexican, U.S. job and wage prospects, even at or below legal minimum wage levels, are highly attractive. From the point of view of a poor minority group member in the United States, such wages yield a living standard not substantially higher even than the modest levels provided by income transfer benefits, "underground-economy" activities or family support.

VI

There has been much discussion regarding the use by immigrants, legal and illegal, of expensive social services, with consequent effects upon the budgetary problems of federal, state and local governments. Here there have been especially extreme claims on both sides. Those seeking to minimize the impact of migrants claim that there is little or no utilization of such services, especially by illegal immigrants who are said to be fearful of applying for benefits. Those who seek to maximize the perceived impacts of immigration in these sectors appeal to the widespread dismay among the American public regarding the rapid growth of governmental spending, and of welfare, health and education spending in particular, and seek to blame these expansions very largely on immigrants.

A calmer statement of what we know would look something like this. Immigrants, legal and illegal, do make use of social and educational services at levels varying from high to low. Legal immigrants (and especially refugees) initially make substantial use of many such services, though most appear to become productive labor force participants within several years of arrival.[28] With regard to illegal immigrants, the available evidence (admittedly from record systems not designed to record legal status) suggests that publicly financed health services (especially emergency, obstetric and pediatric services) are widely employed; educational

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[26] A further issue of unknown significance but considerable concern to disadvantaged groups in the United States is the extent to which affirmative action programs are benefiting the many immigrants who fit their criteria rather than the indigenous U.S. minorities and women who were their intended beneficiaries.

[27] For a discussion of these effects, see Greenwood and Wachter, *op. cit.*, footnote 21.

[28] The Immigration and Nationality Act provides that legal immigrants may be deported if they become a "public charge" within five years of arrival due to a medical or other condition preexisting their arrival. Furthermore, sponsors of legal immigrants (usually family members) are often required to complete a notarized "Affidavit of Support" swearing to their ability and willingness to provide economic support for the prospective immigrant they are sponsoring. However, several court and administrative rulings have neutralized these provisions, providing that the "public charge" provision cannot be applied to government support that does not require repayment, i.e., to virtually all welfare and public-subsidy benefits, and that "Affidavits of Support" are not legally binding documents. A recent amendment to the Social Security Act introduced by Senators Percy and Cranston would require that the sponsor's income and assets be counted in considering a newly arrived alien's application for Supplemental Security Income (S.S.I.), a quasi-welfare benefit for which only low-income persons who are over 65, disabled, or blind are eligible.

(especially remedial and bilingual) services used substantially; unemployment insurance used but not disproportionately; welfare less so; and social security retirement benefits very little. At the same time, immigrants both legal and illegal do pay taxes to support such services, though in the case of the low-paid workers who apparently predominate among illegal immigrants, such taxes are of course very low.[29]

Each of these social service sectors is clouded in controversy and litigation. The County of Los Angeles has sued the federal government for $87.9 million in unreimbursed medical expenses incurred by illegal immigrants there. There is presently a highly publicized judicial battle in the state of Texas regarding the obligation of local and state governments to provide free education to illegal immigrant children. (The Federal District Court in Houston ruled recently that such services must be provided; the case surely will be appealed.) Welfare fraud by illegal immigrants was considered such a problem in New York City that it now requires welfare applicants claiming to be Puerto Rican but with inadequate documentation to obtain certification from the government of the Commonwealth of Puerto Rico. While some argue that recent immigrant workers are subsidizing the social security retirement system because they have payments withheld but draw little in retirement benefits, others note that this is apparently due primarily to the youthful nature of the immigrant population, and that in the future lower paid immigrants who retire in the United States are likely to become net beneficiaries of the Social Security system.[30]

To summarize the state of knowledge regarding social service costs, immigrants both legal and illegal cannot be blamed for the rapid increase in governmental expenditure on such services, but their impact also cannot be dismissed as trivial. Use of such benefits by immigrants range from high to low, depending upon the benefit examined and the characteristics of the immigrant population.

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[29] Advocates of continued illegal immigration have been impressed by data from David S. North and Marion F. Houstoun, *The Characteristics and Role of Illegal Aliens in the U.S. Labor Market: An Exploratory Study*, U.S. Department of Labor, Washington, 1976, showing that 73.2 percent of apprehended illegal aliens report having had income taxes withheld from their pay. It is worth noting, however, that the relatively low wages paid most illegal immigrants mean that any income taxes withheld are small. For example, a single person earning the minimum wage would pay less than $500 a year in federal income tax; if the person is married, with one child, the tax would be $4 a year. Such a worker would of course pay modest Social Security contributions and local taxes as well.

[30] Social security retirement benefits are deliberately redistributive, with higher relative payments going to lower paid workers. Hence to the extent legal and illegal immigrants are concentrated among the lower paid, eventual social security payments will be redistributive in their favor. This fact renders implausible arguments by some that social security deficits can be eliminated by increasing immigration flows of young, unskilled workers.

Marginal or incremental costs may be quite high in some areas of health care, remedial education and bilingual education, and in overall educational expenditures in areas with rapidly growing enrollments (e.g., Texas, California), while simultaneously quite low in long-term medical care and in school districts with declining enrollments and hence surplus capacity (e.g., New York City). In all discussions of this set of issues, due attention must be paid to the average age and income of immigrants insofar as these affect their present and future demands on health services, social security, and other age- and income-related services.

VII

The controversies about large-scale immigration and refugee flows extend well beyond economic cost/benefit calculations to weighty issues concerning the distribution of political power and the size, composition and coherence of the American populace. One such controversy surrounded by uncharted political and jurisprudential shoals is that currently under review by the federal courts—whether persons present illegally in the United States are constitutionally entitled to full congressional representation and, ultimately, even to the vote. This extraordinary issue was joined in the buildup to the 1980 Census, when the Census Bureau decided to make intensive efforts to enumerate undocumented aliens. This stimulated a law suit (by an advocacy group, several members of Congress, and several states) seeking to enjoin the Census Bureau from including persons illegally present in the United States in congressional reapportionment calculations, on the ground that citizens and legal residents of states with few illegal residents would lose congressional seats to which they were entitled. In its defense brief, the Justice Department argued not only that illegal aliens are constitutionally entitled to be counted for purposes of receiving full representation in the U.S. House of Representatives, but also that "nothing in the Constitution forbids a state from permitting even illegal aliens from voting for Representatives."[31] The case is presently before the U.S. Court of Appeals for the District of Columbia.

The demographic implications of immigration have been exaggerated in opposing ways, with assertions by some that the U.S. population can never cease growing unless illegal immigration is stopped and legal immigration is severely curtailed, and others arguing that current immigration flows represent a miniscule percentage of the U.S. population and are relatively lower than in preceding periods this century.[32]

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[31] Department of Justice Memorandum submitted in *Federation for American Immigration Reform* (FAIR) *et al.* v. *Klutznick et al*, unreported, Federal District Court for the District of Columbia. Case No. 79-3269, February 26, 1980, p. 10.

In this area one is closer to ascertainable fact and reliable projection. If total net immigration into the United States, legal and illegal, is over one million per year at the present time (it surely will be much higher in 1980, as indicated above), then immigration today is contributing at least 40–50 percent of population increase. In addition to this crude estimate, one must add the indirect future effects of the immigrants' fertility behavior, which is likely to be somewhat higher than that of the domestic population since a high percentage of U.S. immigrants are now coming from high-fertility countries. If U.S. fertility rates stay at current low levels, then the proportionate contribution of immigration to total population increase will rise rapidly, although the size of the total increase itself could be declining.[33] Authoritative demographic analyses[34] have shown that substantial net immigration—400,000 per year, or about the level of legal immigration in the early 1970s—is consistent with an eventual stabilizing of the U.S. population well into the next century, if domestic fertility averages slightly below two children per woman.[35]

A further demographic fact is that the Hispanic population is the most rapidly growing subgroup of the U.S. population, due to the unintended predominance of Spanish-speaking immigrants described earlier, coupled with higher than average fertility among some Hispanic groups. Many politically active members of this growing minority group (which is normally defined so as to include many Spanish-speaking U.S. citizens from Puerto Rico) are outspoken in describing their common language as a symbol of cultural pride and a force for ethnic unity and power, and therefore have pressed strongly for bilingual educational, legal, police, fire and other governmental services.[36]

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[32] See, for example, the paper by staff members of the Select Commission on Immigration and Refugee Policy entitled "Immigration: How Many?," p. 2 and the same Commission's *Newsletter*, No. 4 (Feb., 1980), p. 8.

[33] The "proportion of population growth" calculation can be misleading if growth is near zero, since even a small number of net immigrants would then account for nearly 100 percent of population growth. However, under the assumptions specified here, U.S. population growth would not approach zero until the middle of the next century.

[34] Ansley J. Coale, "Alternative Paths to a Stationary Population," Commission on Population Growth and the American Future, *Demographic and Social Aspects of Population Growth*, edited by Charles F. Westoff and Robert Parke, Jr., Washington: GPO, 1972, pp. 589-603. There is of course no national consensus as to the desirability of a non-growing U.S. population.

[35] Note that the above fertility assumptions are qualified by "if." Some reputable demographers expect a continuation of recent record-low fertility (e.g., Charles F. Westoff, "Marriage and Fertility in the Developed Countries," *Scientific American*, *239* (6), December 1978), while others anticipate a new baby boom (e.g., Richard A. Easterlin, *Birth and Fortune*, New York: Basic Books, 1980).

These trends in turn have engendered growing concern about increasing bilingualism and political polarization along linguistic lines. Expressions of such fears have included references to the unhappy histories of countries such as Belgium and Canada, where linguistic divisions have led to persistent political problems and demands for linguistic separatism. In response to these concerns, supporters of Spanish bilingual services assert that they will in no way lead to a polarization along linguistic lines, and that the analogy to Canada and Belgium is quite misleading. They point to the large numbers of school dropouts among Hispanic teenagers, and argue that only through bilingual education programs can these children be provided with an adequate educational experience. There is a sometimes bitter dispute between those proponents who see intensive bilingual programs as contributing to a "transition" to English primacy within a few years and those who support "maintenance" of Spanish as a coequal language throughout the educational experience, but both groups state that English competence is one of the goals of such programs.

There is, finally, the issue of political power and the political shifts that result from immigration patterns. Among ethnic groups, the primary advocates of large-scale legal or illegal immigration have tended to be the most politically active. This is particularly true among Chicanos or Mexican-Americans. Although this group as a whole appears to be sharply divided over the issue of continued illegal immigration from Mexico, some Chicano political leaders strongly oppose any measures to reduce such immigration. A minority of radical leaders openly refuse to recognize the legitimacy of the U.S.-Mexico border, arguing that the Southwest and California were "stolen" from Mexico in 1848; others favor continued illegal flows in the expectation of enhanced Chicano political power—a position not strongly welcomed by leaders of other ethnic groups. Still others oppose restraint more in terms of the spinoff impacts they believe policing measures would have on the domestic Mexican-American population, which they assert would be discriminated against and harassed by efforts to control illegal migration.

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[36] The bilingual debate is usually discussed in terms of a multiplicity of first languages other than English, but in fact bilingual services are provided overwhelmingly to Spanish-speaking residents of the United States. For example, while federally supported bilingual education is provided in fully 72 languages, 70-75 percent of the students participating are Spanish-speaking. See National Center for Education Statistics, Bulletin 78B-5, August 22, 1978.

That present and future immigration trends and policies have important implications for political coherence and for ethnic and race relations in the United States cannot be sensibly doubted. Furthermore, there is clear risk that growing opposition to immigration and refugee flows that are widely perceived to be excessively large, insufficiently plural, and heavily illegal may overwhelm existing domestic support for a truly humane and generous set of policies.

VIII

The requirements of a humanitarian immigration and refugee policy go well beyond domestic concerns, and should be a central component of the nation's foreign policy. For example, it is clear that most of the world's 13-16 million officially designated refugees are likely to remain for a long while in the countries of first asylum. The burden of providing sustenance and decent living conditions for refugees cannot fall solely upon those often very poor countries. Hence the world community, and especially the United States, given its traditional concern for refugees, must contribute most generously to multilateral efforts to relieve the immediate suffering of refugees in first-asylum countries. Moreover, strenuous efforts are needed to assist those millions of refugees to become self-sustaining contributors to development in first-asylum countries, rather than drains on their already struggling economies and fragile social and political structures.

In addition, these refugee flows often have serious political implications. The presence of Afghan refugees in Pakistan, Eritrean refugees in the Sudan, Ethiopian refugees in Somalia, and Cambodian refugees in Thailand is a major source of heightened international and domestic tensions in these regions. And the recent examples of Vietnam and Cuba have demonstrated how forced mass expulsions can be used as a direct weapon in foreign policy, and how thorny the resulting foreign policy problems can become. Some of these cases may call for concerted pressures on the countries responsible, so that the refugees can return to their home countries. But for the great mass of refugees fleeing as a result of military or political conflict, there is no escape from the need for sustained multilateral assistance efforts.

At least as serious, in the coming decades, is the problem of those voluntarily seeking to migrate in order to escape intolerable living conditions. In the long run, genuine economic and social development in the Third World is a sine qua non for moderating the rapid expansion of pressures for international movement by immigrants and refugees. Recent and prospective trends are not encouraging. Continued price escalation for oil and manufactured goods, the growing pressures for protectionist trade practices by developed countries, and the tendency to reduce bilateral and multilateral foreign assistance in real terms may compound the array of dismal prospects already facing developing country leaders. The recent report of the Brandt Commission has highlighted the gravity of these and other problems, and the need for increased efforts by all parties to meet them.

On the other hand, assertions by some that development assistance, and not more effective immigration laws and policies, is the only answer to problems of illegal immigration to the United States require us to note that development is a long-term process which is in no way sufficient to deal with the problems of immigration in the 1980s, or even in the 1990s. And the preference of many developing countries for capital-intensive development producing little employment is evidence that much depends upon their own internal decisions. Iran is a vivid example, and it is evident that Mexico has encountered serious difficulties in using its oil wealth for the kind of investment that will provide decent jobs for its people.[37]

But even if the process of economic development moves much more rapidly than it has in the past, the sheer pressure of population growth in the developing countries is bound to generate demands for greater freedom of migration than now exists in most of the world. At the level of foreign policy rhetoric, the following comment of the late President of Algeria and leader of the Group of 77, Mr. Boumédienne, reflects one view of the future in memorable if somewhat provocative words:

> No quantity of atomic bombs could stem the tide of billions . . . who will some

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[37] A Mexican government official is quoted as stating recently that "twelve million rural Mexicans were undernourished, fourteen million lacked drinking water, half earned less than 435 U.S. dollars a year, and 44 percent of those who had work could only find it for three months in the year." A study by the Mexican National Bank of Rural Credit suggested that "of the seven and a quarter million *campesinos* of working age some five million were unemployed or underemployed." The Mexican national unemployment rate is estimated at 35 percent, with an income distribution that leaves 50 percent of the population with less than 17 percent of national income. See Peter Cleaves, Michael Redclift and Nanneke Redclift, "Mexican Development: Problems of an Oil-Rich Neighbor," (Ms., The Ford Foundation, Mexico City, 1980).

> day leave the poor southern part of the world to erupt into the relatively accessible spaces of the rich northern hemisphere looking for survival.[38]

President Lopez Portillo of Mexico characteristically puts the case in far more measured terms. "It is not a crime to look for work," he has stated repeatedly regarding undocumented Mexican migration to the United States, "and I refuse to consider it as such."[39]

Such statements may seem extreme to U.S. citizens and others in the developed nations. But they highlight the potential depth of feeling in developing nations. Reconciling national sovereignty with current international realities and with a world order of enhanced international cooperation and fairness does require a less exclusively nationalistic perspective on immigration and refugee matters than has been the rule in many countries for much of this century, especially among those industrialized countries that have long bridled at granting permanent residence to immigrants and refugees. (Japan, for example, has settled a total of 276 Indochinese refugees, as compared to the 373,747 settled by the United States.) Such movement toward enhanced openness would reduce or at least distribute more evenly the burden now heavily borne by the United States and a few other countries.

But in the case of the United States itself the case for continued openness can be carried to extremes. There are those who argue that U.S. action to enforce its immigration laws would be an unfriendly act directed against Mexico and other neighboring states from which there are now large flows of illegal immigrants. If the United States were to close its borders completely and refuse to admit any immigrants from its neighbors—which no group in this country proposes—then indeed there might be a reasonable claim that the United States was acting at variance with what it has urged other nations to do, and certainly the political reaction would be serious. But to enforce immigration laws in an equitable manner, under an overall framework that will surely remain the most generous to be found anywhere in the Western Hemisphere (or the world), can hardly be construed as an unfriendly act.

The possible linkage between continued large-scale immigration from Mexico and that country's oil and gas exports to the United States raises more difficult questions. Such a linkage has in fact been expressed or strongly implied in statements by Mexican leaders.[40]

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[38] Cited in Otis L. Graham, Jr., "Illegal Immigration and the New Reform Movement," Immigration paper II, Federation for American Immigration Reform, Washington, D.C., February 1980, p. 11.

[39] Smith, *op. cit.*, footnote 13, p. 26.

Yet on a closer analysis it seems likely that Mexico will determine its overall level of oil exports in terms of basic calculations of how much revenue it can use to good effect. Oil is a fungible product, available in a worldwide market, and if Mexico should decide for political reasons to curtail sharply its oil sales to the United States, the result would surely be greater availability of oil in other parts of the world market. As for price, while Mexico is not a formal member of OPEC, on past performance its price policies will closely follow those of OPEC in any event.

In the case of natural gas, pipeline shipments to the United States entail far lower transportation costs than liquefaction and supercooled tanker shipping of natural gas to other markets. Moreover, much of Mexico's natural gas is produced as an inevitable part of oil production, and would be wasted if it were not exported or consumed domestically.

There is every foreign policy reason for the U.S. government, including the Congress, to be sensitive to Mexican concerns, which include trade restraints as well as oil and gas issues and the level of immigration to the United States. But for the United States to refrain from reasonable measures concerning immigration because of its current need for imported oil and natural gas is both questionable in principle and probably exaggerates the actual extent of Mexican leverage. Overall U.S. dependence on imported oil is a heavy burden on our foreign policy in the Middle East and elsewhere; so long as that dependence remains high, the need for Mexican oil and gas cannot be left out of account in any revision of U.S. immigration policy. To allow it to foreclose sensible changes in policy, however, would surely strike most U.S. citizens as intolerable.

Finally, there are those who contend that any U.S. restraint on immigration from neighboring Latin American countries would remove the political safety valve of out-migration for the young and dispossessed, thereby encouraging Castro-type or right-wing revolutions. But surely this argument cuts both ways. Such flows may be viewed as assisting these countries in coping with their political and economic problems, or in the alternative as allowing their elites to export dissension and thereby resist democratic political pressures for overdue reforms. Hence, equally plausible cases can be made that continuation of illegal immigration either reduces or increases the chances of unfriendly revolution in Mexico and other sending countries. Given the demonstrated difficulty of predicting revolutions, it would seem judicious to consign this argument to the "neutral" or "don't know" category.

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[40] The apparent currency of such arguments in some State Department circles is suggested by a devastating Herblock cartoon in *The Washington Post* (December 15, 1978) showing four foreign policy experts in a situation room before a map of the Mexico-U.S. border, with one exclaiming in a flash of insight, "What if we asked each illegal alien to roll a barrel of oil in with him?"

IX

The choices available to U.S. policymakers are diverse and complex; each set of choices involves a different array of international and domestic implications, and each is characterized by a set of distinctive differences of opinion and political constraints.

The first obvious policy choice, and the one with the fewest immediate political constraints, is to do nothing. The present incoherence of policy has its political attractions, since it leaves difficult value choices inexplicit, allows the most committed interest groups to pursue their interests unimpeded, and yet avoids explicit endorsement of their aims which might offend the majority of the electorate. A policy of inaction would allow employers seeking compliant labor to continue to import migrant workers easily, other countries to continue to export their surplus populations to the United States, interested ethnic activists to continue to strive to maximize their numbers through immigration, and civil liberties advocates to continue to assure themselves that new policies would not threaten civil liberties.

The risks are those common to all such strategies of inaction, that the negative consequences will increase and become harder to control, and that the political risks will increase in proportion. An obvious political risk of inaction is the stimulation of an uncontrollable backlash that would go well beyond the issues of policy incoherence and lax enforcement, and would threaten the basic openness of American society to access by immigrants and refugees. Such nativist, even racist, reactions have been common in the history of the United States, and have also occurred recently in otherwise liberal countries such as Great Britain and Switzerland. (These include racially motivated changes in immigration laws promulgated by both Labour and Conservative governments in Britain since 1968, and a nationwide referendum in Switzerland that failed narrowly but would have had the effect of expelling many foreign workers.)

The second broad option is effective enforcement of existing law. While it might seem surprising at first glance that this would ocal opposition, this is the case and has much to do with the present lax enforcement situation. Under existing law, it is unlawful to enter the United States without permission, to overstay the terms of temporary visas, or to obtain employment under such visas unless authorization to work has also been granted. Hence enforcement of existing law would require effective policing of entry points, adequate follow-up of legal visitors to assure that they depart promptly, and sufficient enforcement of employment prohibitions to make it reasonably difficult to violate them.

It is certain that effective policing of U.S. borders would be criticized by the government and press of Mexico and possibly several other sending countries, by some ethnic activists, by prospective employers of illegal aliens, and by some religious and civil liberties groups. In the past, even the replacement of a collapsed 30-year-old border fence in El Paso has been characterized by domestic and Mexican critics as the building of a "Tortilla Curtain," with ready parallels to the Berlin Wall and exaggerated claims as to the dangers it would pose to law violators. Many advocates go so far as to assert that effective enforcement is impossible without the adoption of police-state tactics.

Former Commissioner of the INS Leonel Castillo, a Chicano politician not generally considered a strong advocate of enhanced enforcement efforts, was not of this view. In 1978 congressional testimony, the following illuminating colloquy occurred between the Commissioner and Chairman James H. Scheuer (D-NY):[41]

> MR. SCHEUER. Can we regulate illegal entry into this country by means that are reasonably appropriate and acceptable to us? I don't think the American public would like to see a 20-foot high Berlin wall erected on that 1,950 mile border with submachineguns and police guards and sirens and watch towers. Can we do it with means and technology that are not obnoxious to us?
>
> MR. CASTILLO. I believe so. I don't believe that it would be that technologically difficult or technically difficult to severely or dramatically curtail the number of persons entering the United States without documents.
>
> MR. SCHEUER. You believe that can be done?
>
> MR. CASTILLO. I'm convinced it can be done. I was not of this opinion before I got this job, but having looked at it a little bit more, we know, for example, that more than 50 percent of the entries that are made into the United States without documents are made at or near three locations: San Diego, Calif., El Paso, Tex., and Yuma, Ariz.
>
> If we simply increased our resources at those three locations we'd have an enormous impact just in three places, a total of less than 40, 50 miles, and if

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[41] U.S. House of Representatives, Hearings before the Select Committee on Population, "Immigration to the United States," No. 5, Washington: GPO, 1978, p. 139.

> we did that there would be, of course, some spillover to other parts of the country. . . .
>
> Except that it's much harder for people to make the decision to cross along the inhospitable parts of the border. To go from one urban area in Tijuana, Mexico, to an urban area in San Diego involves a short jog or sprint or move. But to cross a 100-mile desert takes a lot more, plus it's easier for us to see them by flying over. Enforcement's a lot easier.

A third option is a thoroughgoing revision of present law and practice regarding immigration and refugee policy. Such was the intent of congressional action in 1978 establishing the commission now chaired by Father Hesburgh of the University of Notre Dame. Entitled the Select Commission on Immigration and Refugee Policy, it was charged under Public Law 95-412 with the evaluation of all existing laws, policies and procedures governing the admission of immigrants and refugees and the preparation of legislative and administrative recommendations to the President and Congress. The Commission, due to report in early 1981, has a distinguished membership consisting of four members each of the House and Senate Judiciary Committees, including Chairmen Rodino and Kennedy, four Cabinet officers (Justice, State, Labor, and Health and Human Services), and four public members including its Chairman. A commission of this high quality and political influence ordinarily could be expected to carry considerable weight. Unfortunately, the Select Commission has been plagued from its inception with serious staff problems that are now widely known, and it will require strong efforts by the Commissioners themselves to build internal consensus and external support for the Select Commission's recommendations when they are put forward.

Ultimately, any reforms will depend upon the Congress, which historically has exercised its prerogatives strongly in the immigration and refugee field.[42] The congressional process will, in turn, depend upon a complex and virtually unpredictable confluence of domestic and international political considerations, economic circumstances, and the increasingly Byzantine internal politics of the Congress itself and of its various committees. Despite such uncertainties, the broad outlines of alternative reforms are reasonably clear, and much can be gained by stepping back from the ongoing fray for a dispassionate assessment of the trade-offs that must be made among conflicting values and interests.

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[42] The 1952 McCarran-Walter Act was passed by Congress over President Truman's veto—the only postwar case of a Democratic Congress overriding a Democratic President until the rejection of President Carter's "oil conservation tax" in June 1980. Conversely, President Carter's 1977 initiative on illegal immigration sank without a trace in Congress.

In analytical terms, a humane and realistic immigration policy for the United States (or for any other country) must meet several basic requirements that are constant, and include decisions (explicit or implicit) regarding certain variable factors that fit within the constants. The constant basic requirements may be separated analytically into three overarching principles:

1) The policy must be an expression of dominant national interests and humanitarian values, representing a broad political consensus rather than the views of special interests, and recognizing that the concepts of borders and citizenship are central to national sovereignty.

2) The policy must protect the basic civil liberties and human rights both of citizens and of the immigrants and refugees legally admitted.

3) The de jure policy must be enforceable in practice in the real world; if it is not, it will be a different policy de facto.

Within these broad baseline requirements, policy determination requires a set of balanced choices, including: overall numbers to be admitted; the proportion of these who may be political refugees as opposed to normal immigrants (and how these loosely used categories can be tightly defined); the degree to which labor migrants may be temporary or permanent; the level of immigration law violation that is deemed tolerable; the composition of overall immigrant flows as to skill level, national origins, ethnic/religious/linguistic group, and kinship ties to citizens as distinct from "new seed" immigrants; and the relative weights that should be given to foreign and domestic concerns in determining immigration policy.

While it would be relatively easy to attain agreement that the above principles and choices are central, their application and the trade-offs inevitably required are another matter. Full agreement surely is impossible given the high level of special interest group advocacy in this field. What could be hoped for is a broad-based consensus that anticipates continued sniping from the fringes, and which might look something like the following:

1) With regard to basic principles, U.S. policy on immigration and refugees should sustain the long-standing American value of openness to immigrants and refugees from diverse sources, and should enhance the trends of the past 15 years away from discriminatory criteria for admission. This means that xenophobic and neo-isolationist tendencies should be rejected and the traditional values of openness and hospitality affirmed. It does *not* mean that

immigration or refugee flows should be unlimited, or indeed that they should continue at the near-record levels of the legal and illegal immigration over the last few years. As we have seen, the United States is now receiving the bulk of the world's refugees and immigrants, and immigration at such levels is having substantial impacts in U.S. labor markets, is coming to dominate U.S. population change, and is stimulating large and growing opposition to immigration itself. Under such circumstances, attempts to sustain immigration levels or expand them even further may threaten the basic value of openness. Ironically, in this sense the well-intentioned advocates of "open borders" or unlimited refugee admissions may actually represent the most serious of the various threats to a truly open and humane U.S. policy on immigration and refugees.

2) The protection of basic civil liberties in the formulation and implementation of an immigration policy will require careful and balanced attention. To date the leading proponents of civil liberties have failed to approach the subject comprehensively, but instead have reacted piecemeal to perceived abuses arising out of current or proposed laws or practices, without offering effective approaches as alternatives to those they oppose.[43] Unless civil libertarians do provide constructive alternatives, they may unintentionally reinforce the proponents of unlimited legal and illegal immigration in encouraging a backlash against the very rights and liberties they seek to defend.

Awareness of this problem is growing among leaders of some civil liberties groups, and hence in the future we can hope for a reasoned set of proposals that preserve and protect the most basic of civil liberties, while enabling the nation to exercise its sovereign right to enforce its immigration laws effectively. Such proposals, when carefully considered, are likely to recognize that a sincere respect for civil liberties does not require, for example, that all civil and constitutional rights of U.S. citizens and legal immigrants be granted immediately to persons clearly present in violation of law. Surely illegal immigrants are entitled to all basic human rights, e.g., the right to humane treatment while in custody, the right of *habeas corpus*, and so on. Yet, realistically, if every technical aspect of legal due process, including the right of appeal right up to the Supreme Court, is to be guaranteed persons observed walking across an open border or landing in a small boat on an unpatrolled beach, enforceable immigration laws cannot exist in a practical sense. Furthermore, support for such an absolutist position implies an elemental unfairness—the full panoply of legal rights are to be granted to persons willing to violate the law, but similar rights of appeal are not given to others who respect the law and apply for legal entry, but have not yet entered the country.

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[43] The policies of the American Civil Liberties Union are instructive: ACLU opposition is expressed toward sanctions against employers hiring aliens unlawfully in the United States (Board Policy No. 327); use of a social security card or any other governmentally issued document as a condition of employment (*ibid*); deportation of any minors illegally in the United States (No. 329); raids on workplaces suspected of employing illegal aliens (*Ramos* v. *Anderson* suit in Texas); and so on.

A careful analysis of civil liberties concerns is also likely to lay to rest opposition to some form of effective sanctions against employers who systematically and repeatedly employ persons who are violating U.S. immigration law, since the jobs made available by these individuals and firms are apparently the primary "pull" factor encouraging illegal immigration. In effect such an approach would represent a simple repeal of the atavistic "Texas Proviso" described earlier.

To protect U.S. citizens and legal resident aliens of Hispanic origin, such sanctions will require enhanced enforcement of anti-discrimination laws and regulations, and the use of a forgery-proof identification procedure to be required of all job applicants equally. There are a number of alternative identification approaches worthy of consideration; one example is a modest bolstering of the present practice that requires a job applicant to give his/her social security number, by requiring in addition simply the physical presentation of a revised social security card that is not easily counterfeited. The uses of such a document would have to be carefully circumscribed by strong legal prohibitions on its use in sectors other than employment, to prevent its evolution into a universal "identity card"—a matter of justifiable concern to those committed to limiting governmental intrusion into private aspects of American life.

The matter of amnesty for persons already in violation of U.S. law is often raised in discussions of reforming immigration law and enforcement practice. Any proposal for amnesty is bound to be controversial, since it in effect rewards with permanent residence (and eventually with citizenship) those who have violated U.S. immigration law in the past, while giving no comparable rewards to those who abided by these laws. For humane reasons, however, some form of limited amnesty must eventually be granted to persons who have lived many years of their lives illegally in the United States and have established deep personal and familial roots in this country.

It seems unwise, nonetheless, to link amnesty for illegal residents closely to present discussions of policy reform. For those presently intending to stay only temporarily, such discussions of amnesty represent a significant incentive to change their minds. Reduced availability of employment through repeal of the Texas Proviso presumably would encourage others to return home voluntarily. Finally, premature talk of amnesty acts as a powerful magnet for accelerated flows of new illegal aliens, seeking to enter before enforcement is made effective, a process which will take several years at least.

Proposals for limited and carefully screened amnesty will become more sensible once the dust has settled: when effective law enforcement measures are in effect, when employer sanctions are in force, and when undocumented workers desiring to earn a nest egg and then return to their homelands have been given reasonable time to do so.

3) The principle that immigration policy must be enforceable as a practical matter requires a realistic view of the problems faced by all law enforcement, and of the particular realities favoring immigration law violation, and must be infused with basic American abhorrence of police-state tactics. The goal of immigration policy must not be to eliminate illegal immigration entirely (to "seal" the borders and ports of entry), but instead to bring the present pervasive violation of immigration laws within reasonable bounds, and to assure the bulk of prospective offenders that they are likely to fail. If the incentives to law violation are rendered low and the risks high, the rate of such violations must surely decline. At the present time, the balance is the reverse: incentives are high for both the illegal migrant and his/her employer, and the risks are low for the migrant and nil for the employer.

The realities of present and prospective enforcement efforts are disheartening.[44] The Immigration and Naturalization Service and its associated Border Patrol have long been both the whipping boys and the laughing stocks of the executive branch. It is notorious that they are—simultaneously—underfunded, mismanaged, undermanned, inadequately supplied, riven by internal dissension, and politically manipulated, yet they are also routinely

[44] Some INS limitations have an Alice in Wonderland quality. Two examples: first, INS investigators who receive reliable but confidential information from informants about places of work or residence harboring large numbers of illegal aliens are prohibited by Justice Department directives from inspecting these premises. Second, due to budget problems, Border Patrol stations in Texas suffered a 60-70 percent cut in their gasoline allocations for at least one month of 1980, leading to a ration of 4-6 gallons per (gas-guzzling) patrol vehicle for each eight-hour shift in one important border sector.

pilloried for failures to fulfill assigned missions under such impossible circumstances.

At a minimum, the standards applied to other law enforcement agencies should be applicable to the Border Patrol. The recommendations of former INS Commissioner Castillo seem eminently reasonable, one might even say elementary: to concentrate adequate personnel, barriers and equipment along the border points and coastlines known to account for the bulk of illegal entries. There is no need for a "Berlin Wall" or a fortified border. What is needed is a law enforcement effort that would be demanded as minimal in any town or city in this or any other country.

More than a few small helicopters and Piper Cubs, a few hundred personnel, and essentially no physical barrier would seem to be in order for regulating 6,000 miles of frequently penetrated border, plus the long coastlines of Florida, Puerto Rico and other areas known to be entry points. More than a thousand investigators would seem to be needed to provide even minimal chances of apprehension of millions of illegal residents. More than an archaic non-automated record system would seem to be in order to keep track and assure the prompt and lawful departure of eight million tourists and others admitted annually for temporary visits.

Such minimal enforcement efforts would be consistent with practices in every other country, including the major source countries of illegal immigrants, and with all the basic values of our nation. Money would be required, but only relatively modest sums are involved. The entire INS budget for fiscal year 1980, including all its routine processing activities (e.g., naturalization of legal immigrants) was only $337 million. The budget of the entire U.S. Border Patrol is only about $77 million—less than that of the police department of the City of Baltimore alone ($95 million) and less than half that of Philadelphia ($221 million).[45]

4) As to the various decisions requiring trade-offs among competing goals and values, the following appear attractive to this author:

First, it is clear that advocacy of unlimited immigration into the United States cannot be taken seriously in a world in which three billion people are very poor and their numbers increasing rapidly. At the same time, the present numbers of legal immigrants and refugees—290,000 immigrants under ceilings, unlimited immigration of immediate family, 50,000 "normal flow" of refugees, undefined numbers of "emergency" refugees—are wholly arbitrary, numbers picked out of a hat, so to speak, during the course of congressional consideration, and expanded by the accretion of various legislative amendments and judicial and administrative decisions since 1952.

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[45] International City Management Association, *Municipal Yearbook 1980*, Washington, 1979, p. 120.

In the abstract, no single number is "correct": much depends upon the social, economic and demographic circumstances of the nation at any given time. In a period characterized by low levels of racial and ethnic tensions, high economic growth, apparent shortages of labor, and substantial natural increase of the domestic population, an increased number of immigrants and refugees can be beneficial and cause no serious dislocations or antagonisms. On the other hand, during times of high social tensions, a slack economy, high unemployment, and low or negative natural increase of the domestic population, the economic benefits of large-scale immigration are absent and the maintenance of domestic tranquillity and of support for continuing openness to immigrants and refugees requires the reduction of their numbers.[46]

Whatever the overall number of immigrants and refugees that is set for a given period, it should encompass all forms of immigration and refugee flows. Hence if a particular refugee emergency seizes the attention and sympathy of the nation, increased admissions as a result of such circumstances would have to be balanced by decreased admissions in other categories. This would require that explicit trade-offs be made, that the notion of limits be acknowledged, that the demands of a particular set of special-interest advocates not be treated in isolation from the demands of others. In short, it would represent a form of discipline such as the Congress imposes upon itself in the formulation of its Budget Committees and Budget Resolution process, based on the recognition that its past willingness to increase expenditures in one area without trading off some other expenditures was a prescription for irresponsible fiscal policy.

In an ideal world, it might be possible to devise a flexible system that would adjust immigration numbers to changing national and international circumstances in a responsive and objective manner. Yet realistically this seems quite impossible in the political system of the United States today. The prerogatives of the Congress in immigration matters, coupled with the pressures on its time and its acknowledged responsiveness to special interest groups, necessarily restricts it to the role of setting broad policy outlines for some other entity to implement in a flexible manner. At the same time, postwar experience in the executive branch and with semiautonomous commissions has seen the capture of key regulatory bodies by the most interested of special interest groups (albeit with some notable reversals of this trend in recent years), which in the case of immigration matters might be even more divisive than the present disarray of policy.

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[46] In this respect, recent policies of the U.S. government—both permitting dramatically increased refugee flows and curtailing law enforcement against illegal immigration during a period of severe economic stresses—must be adjudged to be lacking in prudence by long-sighted supporters of continued openness in immigration policy.

Hence a system of what might be termed "periodic flexibility" seems preferable. Firm numerical limits for all immigration and refugee admissions would be set, with strictly circumscribed latitude for emergency admissions beyond these limits, e.g., through a requirement of affirmative support by both houses of Congress before such admissions could be allowed.[47] These limits could be subject to a "sunset" clause that would require periodic legislative resetting based upon economic, social, political and demographic conditions that may have changed. Given the slow-changing nature of most of these conditions, a ten-year cycle like that for congressional reapportionment might not be overly rigid, although a shorter cycle might be preferred.

Various proposals for a new, large temporary-worker program have been promoted as a means of regularizing the current flow of illegal immigrants, providing low-cost seasonal labor for employers, and offering a quid pro quo to Mexico for accepting effective enforcement of American immigration law. The pros and cons of such proposals go well beyond the scope of this article, as the plans differ greatly in size and form. At a minimum, any consideration of such proposals must be informed by the extensive European experience with guest worker programs over the past 30 years, discussed above. This includes recognition that such programs have optimal impacts when unemployment rates are very low; that unanticipated social and political problems can be generated and must be taken into account in assessing costs and benefits; and that temporary migration often proves to be more permanent than temporary.

5) In the long term, it will be important to ensure that no single national, ethnic, religious, racial or linguistic group comes permanently to dominate American immigration—in short, we shall have to find fair-minded ways to assure the true diversity among immigrants to the United States that has been the intention, if

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[47] Since 1952, as former Attorney General Griffin Bell has noted, the present "parole" authority of the Attorney General has frequently been exercised in circumstances not envisaged by the Congress. The problem has recently been highlighted by the widely criticized handling of the so-called freedom flotilla from Cuba.

not the effect, of much of the legal reform realized over the past two decades.[48] In this sense, the large flows of refugees from Indochina in recent years have been salutary; they have enriched the cultural diversity of the United States, while maintaining its leadership as a haven for those facing political persecution.

X

The factors affecting immigration flows are normally visualized as a confluence of "push" factors in the sending country, "pull" factors in the receiving country, and "barriers" between them that take a legal, geographical or economic form. A comprehensive effort to regularize and control immigration to the United States must consider all three types of factors. The "push" factors are increasingly the poverty and political instability of the developing world—problems that can be confronted only through foreign policy initiatives, development assistance, and trade and economic policies affecting the developing world. The "pull" factors are said by most illegal immigrants to be primarily economic—the ready availability of relatively attractive jobs. The reduction of this primary "pull" factor requires the elimination of the Texas Proviso, with proper safeguards to protect civil rights and liberties. Finally, the "barrier" factors, which overall have been declining due to cheaper and easier transportation and improved communication, can only be regulated through more effective enforcement of legal provisions. Approaches to all three factors are eminently the province of policymakers.

Part of the confusion that characterizes the ongoing debate is due to the fact that immigration and refugee policy is one of those few subjects in which the liberal-conservative continuum is utterly meaningless. Some conservatives have favored unrestrained immigration to cheapen labor and reduce the power of unions, while others have opposed it on xenophobic or racist grounds. It is easy to identify liberals who have supported unlimited immigration in the spirit of humanitarian concern for the poor of the world, and others who have opposed it in the spirit of humanitarian concern for the poor of the United States. The array of political forces favoring continued large-scale illegal immigration include such unlikely bedfellows as agribusiness and industrial interests seeking cheap and compliant labor, religious leaders promoting global egalitarianism, ethnic activists seeking supporters, liberal unions recruiting new members, and idealists desiring a world without borders. Opponents of illegal immigration include many members of disadvantaged minority groups, liberal labor unions, and racist groups such as the Ku Klux Klan. Such bizarre coalitions defy all normal political logic, and help explain why so many prefer to avoid the issues entirely—no matter what position one adopts, one is agreeing with the views of highly unattractive new allies, while antagonizing old or potential allies in other important causes. Willingness to deal sensibly with immigration issues is further diminished by the ready use of unfair accusations of "prejudice" or "racism" against those urging that immigration flows be regularized and brought under more rational control.

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[48] To this end, the immigration policies of Canada and other leading countries of immigration would appear to be worthy of our careful examination. The Canadian policy includes a "point system" that scores applicants for immigration simultaneously according to various criteria, including family ties to Canadian citizens, competence in one of the nation's two official languages, occupation, education, etc., instead of the far cruder preference system of current U.S. law.

Yet it is clear that there is an overwhelming national consensus favoring effective efforts to curtail widespread abuses of immigration law and, one would hope, a continuing (if declining) openness to controlled legal flows of immigrants and refugees. Hence the prospects for a sensible set of trade-offs are not as implausible as the loose rhetoric of advocates make them sound.

In the long term, the only humane and sustainable policy regarding immigration and refugees must be one that accurately reflects American national interest and humanitarian values, protects the civil liberties and rights of citizens and immigrants alike, and recognizes the importance of trade and foreign assistance policies for developing countries. Such a policy can continue to admit very substantial numbers of legal immigrants and refugees and to be firmly nondiscriminatory and pluralistic in its orientation. And a comprehensive approach designed to bring large-scale illegal or undocumented immigration under reasonable control would go far toward promoting several desirable goals at once: assuring that immigration policy does not unfairly burden disadvantaged Americans; reestablishing the plural mix of immigrants and refugees of which most Americans are justifiably proud; and reversing the widespread belief that American immigration policy is out of control. By so doing, it would represent the single most important contribution toward a rebirth of America's historical commitment to a liberal immigration policy.

In the coming year the task will fall to the next President and Congress to formulate legislation that will embody such an immigration policy, and to find the will to enforce it. Ignoring the uncompromising extremism of the fringes, such reforms can be forged and implemented with no damage to the basic values of American life.

IMMIGRATION POLICY AND INDIVIDUAL PRIVACY

(BY TRUDY HAYDEN, A REPORT PREPARED
FOR THE AMERICAN CIVIL LIBERTIES
UNION BY THE PRIVACY PROJECT OF
THE NEW YORK CIVIL LIBERTIES UNION)

With the release in March 1981 of the report and recommendations of the Select Commission on Immigration and Refugee Policy, Congress and the nation are once again turning their attention to proposals for remedies to what has come to be known as "the illegal alien problem." As in earlier discussions of this complex and emotional subject, one idea under consideration is a statutory ban on the employment of "illegal aliens," combined with an identification system for distinguishing persons eligible for employment from those who are in the United States illegally or whose entry documents do not permit them to work. Such proposals have been opposed by the American Civil Liberties Union and other public interest organizations on the grounds that they would exacerbate discrimination against minorities and in a number of ways severely intrude upon the right of personal privacy.

The ACLU believes that the privacy implications of laws prohibiting the employment of undocumented workers are not sufficiently understood by the public. If they were, we do not think that most Americans would choose to risk what remains of their already diminished right to privacy in return for what could be only insubstantial improvement in the "illegal alien problem." This memorandum has been prepared in order to present in detail the ACLU's analysis of the effects of immigration policy enforcement on rights of individual privacy.

Proposals for Deterrents to Employment of Undocumented Aliens

The creation of economic deterrents to the employment of "illegal aliens" is not a new idea. Over the past ten years, there have been at least five major Congressional proposals making it unlawful for an employer knowingly to hire any alien not legally admitted to the United States with permission to work.[1] Each of these would have required that an employer take measures to assure that job applicants had proper documentation.

One recurrent objection to such legislation has been that it would exacerbate existing widespread discrimination against minorities, in that penalizing employers for hiring "illegal aliens" would only make them reluctant to employ anyone with a foreign accent, name, or appearance -- in practice, members of the very racial and ethnic minorities that already suffer a heavy burden of employment discrimination. According to this argument, the law-abiding employer would prefer to avoid the trouble and expense of trying to verify a "suspect" applicant's eligibility to work simply by refusing to hire anyone whose appearance suggests that he or she might be an "illegal alien." At the same time, the less scrupulous employer would continue to hire undocumented aliens and, because of the difficulties of enforcing such a law, run little risk of detection and penalty.

The Select Commission on Immigration and Refugee Policy itself has now recommended federal legislation making it illegal for employers to hire undocumented workers.[2] On the issue of the employment discrimination that would be likely to result from such legislation, the Commission said:

> ...[A]n effective employer sanctions system must rely on a reliable means of verifying employment eligibility. Lacking a dependable mechanism for determining a potential employee's eligibility, employers would have to use their discretion.... The Select Commission does not favor the imposition of so substantial a burden on employers and fears widespread discrimination against those U.S. citizens and aliens who are authorized to work and who might look or sound foreign to a prospective employer. Most commissioners, therefore, support a means of verifying employee eligibility that will allow employers to confidently and easily hire those persons who may legally accept employment. Without some means of identifying those persons who are entitled to work in the United States, the best-intentioned employer would be reluctant to hire anyone about whose legal status he/she has doubts.[3]

Some of the Commissioners felt that the fairest and most effective system of eligibility verification would be one that applied to the entire work force; others characterized this view as "overreaction," and thought that a more narrowly drawn requirement would suffice.[4] No single proposal achieved a consensus, and the Commission agreed only "on the principles that should underlie a verification system: reliability, protection of civil rights and civil liberties and cost-effectiveness."[5]

It is the ACLU's belief that these principles cannot be achieved: that any form of verification sufficiently reliable to support a fair system of employer sanctions is unlikely to be cost-effective, and most certainly will pose a grave danger to civil rights and civil liberties.

Every system of verification that has been considered for this purpose rests ultimately on the creation of a reliable mechanism for personal identification and a link between identification and eligibility for employment. One suggested approach would use a counterfeit-resistent identity document, possibly an improved version of the Social Security card. Presumably, such a document would contain the bearer's photograph, signature, perhaps other identifying data, and a code indicating the bearer's citizen or alien status -- all verified by information in government databanks. It would have to be physically tamper-proof, for example, manufactured of materials that would shatter if an attempt were made to substitute another photograph or alter any of the data. Employers would be required to check the cards of all new applicants and to record their numbers.

A different method would dispense with the need for an identity document, relying instead on a government databank of eligible workers. The employer would submit forms on each new employee, to be screened by government officials against records in the databank, or, in a technologically more sophisticated version, ascertain applicants' eligibility by telephoning the databank.

How would these systems threaten the right of privacy? First, in the case of an identity document, by creating a domestic passport implementing the government's already broad police power to stop, question, and search. Second, by creating what amounts to a national population registry, a government databank through which every individual's personal identity is established and validated. Third, through the certainty that this databank will eventually be used to further other important public programs and policies unrelated to immigration, and thereby become both an enormous repository of personal information and a means for tracking and controlling the lives of American citizens. And fourth, through the use of the Social Security number, by establishing a universal identifier that facilitates the matching and exchange of data among many different governmental and private record systems.

These are not merely projections of remote possibilities. Existing laws and record-keeping practices have already brought us perilously close to each of these eventualities. The institution of an employment eligibility system could very well be the final step toward their realization.

Creating a Domestic Passport

Under a system of sanctions for hiring undocumented workers, an identity document would function as a kind of "employment passport." In order to hire workers, employers would rely upon the card to ascertain their applicants' personal identity and legal right to work in the United States.

In this very limited context, a so-called employment passport may not seem particularly threatening. However, we believe that such a document would quickly cease to be merely a passport to employment, and become the domestic or internal passport which is the hallmark of so many modern police states.

Certainly no one intends this result, and proponents of the identity card believe that they can take steps to prevent it. What they may not fully realize, however, is that the government's police powers to stop and search are already sufficient to transform the identity document into a major threat to privacy and freedom of movement.

A look at some Supreme Court decisions over the last decade will illustrate the point. In two 1973 decisions, the Court ruled that an officer arresting a motorist for driving without a license or with a revoked license may search both the motorist and the vehicle. U.S. v. Robinson, 414 U.S. 218; Gustafson v. Florida, 414 U.S. 260. In both cases the search was precipitated by the motorist's failure to carry a valid document. Although six years later the Court struck down random spot checks of driver's licenses and registrations, Delaware v. Prouse, 440 U.S. 648 (1979), it distinguished such searches from those conducted at U.S. borders or at specific checkpoints within the country. The Court has sustained document inspections at border checkpoints and their "functional equivalents," Almeidia-Sanchez v. U.S., 413 U.S. 266 (1973), U.S. v. Martinez-Fuerte, 428 U.S. 543 (1976), and stops by roving patrols for "reasonable suspicion" based on the physical appearance of the occupants of a car, U.S. v. Brignoni-Ponce, 422 U.S. 873 (1975).

In U.S. v. Mendenhall, 48 U.S.L.W. 4575 (May 27, 1980), the Court upheld the constitutionality of a stop and request for identification by drug agents at an airport, on the grounds that the woman had not been "seized" because she could have walked away at any time. The Court distinguished this situation from its invalidation of a stop in an earlier case, Brown v. Texas, 443 U.S. 47 (1979), in which police had stopped a man in a high drug problem area, requested identification, and were refused -- a crime under Texas law. The distinction drawn by the Court was that in Brown the individual had been "seized," in that he was detained, however briefly, and was not free to walk away.

In these cases and others in the lower courts, the police power has been defined as allowing government agents to stop individuals without any particular suspicion of a crime, to request identification, and to search, detain, or arrest people who cannot produce proper documents. Just how far this can be carried is dramatized by the recent case of a New Jersey woman who was stopped for a traffic violation, arrested for driving without her registration and insurance documents, and strip-searched in a cell at the police station.[6]

The Supreme Court decisions just described are directly pertinent to the proposal for a work identity card. Such a card would be very "convenient" to have on hand when Immigration Service officers conduct their regular dragnet searches of factories and bus stations and barrios, and even on the street, since, under Brignoni-Ponce, the appearance of being an alien in a place where aliens are likely to be found is enough to justify a stop and interrogation. Many blacks, hispanics, orientals, and other "foreign-looking" citizens and resident aliens might find it necessary to carry their identity cards all the time, even if there was no law that required it. In fact, because the card would be regarded as reliable identification, many others might also find it "convenient" to have it always at hand, especially people who are young, poor, unconventional in hair style and dress, frequenters of "disreputable" gathering places, or given to walking on deserted streets at night. The line between "convenience" and "necessity" would be blurred, and the card might become "mandatory" by usage rather than by legislation.

The utility of an identity document would be enhanced by the modern technology of instant electronic communications. Many police squad cars and station houses are already equipped with computer terminals affording direct communication with databanks of "wanted" persons, stolen vehicles, and criminal histories. Such technological capability for instant communication by officers in the field with government databanks, the broad police power to make identity checks, and a national identity document that becomes a standard fixture in everyone's wallet, all add up to produce a domestic passport, in fact if not in name.

Throughout their history Americans have instinctively recoiled from the idea of a governmental identity document, recognizing that it is fundamentally inimical to democratic traditions. We should respect and foster that instinct, and resist the temptation to take a step from which there can be no turning back.

Creating a Population Registry

With or without an identity card, a system designed to allow employers and the government to determine who is eligible to work in the United States will require the establishment of a databank listing the entire United States labor force -- initially, at least 100 million people. That databank will grow year by year to encompass every active, prospective, and retired worker, becoming a cumulative registry of the nation's population.

If such a databank is truly to serve as a reliable means of checking both identification and employment eligibility, it must contain current, verified personal information on each data subject. In addition to the Social Security number and other items commonly used to establish identity (date and place of birth, sex, former names, parents' names), this information would probably include a physical description such as height, coloring, and race, perhaps some unique identifier such as a signature or photograph or even fingerprints, and of course a notation of status as a citizen or alien with permission to work.

The databank is the foundation of a system of sanctions against employers who hire "illegal aliens." While a databank could function without an identity card, ultimately an identity card would prove unsatisfactory without the databank. Counterfeit and fraudulently obtained documents are already used by "illegal aliens" not only to obtain employment and in various other governmental and private transactions, but often to get into the United States in the first place.[7] A supposedly "secure" Social Security card or identity document would not be impervious to fraud, counterfeiting, and tampering on the basis of its physical properties alone, for the technology that makes such a docuemnt possible is available outside as well as within the government.[8] Moreover, valid identity documents would presumably continue to be issed on the basis of forged, stolen, altered, or fraudulently obtained "breeder" documents (birth certificates, driver's licenses, green cards, baptismal and school records, etc.), which are responsible for much of the false and fraudulent identification now in circulation.[9] It has even been suggested that a Social Security card or identity document which is reputed to be counterfeit-proof and tamper-proof might actually foster the use of fraudulent identification, especially if the possession of such a document is required by law as proof of the right to live and work in this country.[10] The price of black-market documents would certainly increase, but so too might their use.

The need for a national population registry as the foundation for a "secure" identity document is commonly acknowledged. The HEW Advisory Committee on Automated Personal Data Systems ventured that prediction in 1973.[11] So did the Privacy Protection Study Commission in 1977,[12] and the U.S. Commission on Civil Rights three years later.[13] Reports by the Federal Advisory Committee on False Identification and the Domestic Council Committee on Illegal Aliens in 1976, and by the General Accounting Office in 1980, all emphasized the great difficulty, if not impossibility, of creating a foolproof identification system for immigration policy purposes without a separately maintained database for verification of documents.[14] Most recently, the staff of the Select Commission on Immigration and Refugee Policy pointed out that all of the identification systems proposed to implement sanctions against employers would create a new governmental database,[15] which would be in effect a national registry.

In a sense, the government has already tried to create something like a population registry by using the files of the Social Security Administration as a kind of master list of eligible workers. Since 1972, applicants for Social Security numbers have had to submit documentary evidence of citizenship or alien status, and the SSA has notified the Immigration and Naturalization Service whenever earnings are reported for Social Security numbers issued to aliens who are not authorized to work. But these efforts have not been particularly fruitful, in part because the SSA's records and procedures are not designed with the primary purpose of establishing and verifying personal identity.[16] In contrast, that would be precisely the purpose of a real population registry. Nonetheless, even the ineffectual efforts of the Social Security Administration demonstrate that a central database or population registry is recognized as essential to any ban on the employment of undocumented workers. Without a reliable database, there can be no workable scheme of sanctions against offending employers.

On purely practical grounds, the implications of a population registry are disturbing. If it is true that the issuance of supposedly tamper-proof, counterfeit-proof identity documents might eventually only further encourage the criminal uses of false identification, one can imagine the magnitude of a successful conspiracy involving the registry itself. Moreover, the costs of a registry could be staggering: one can read estimates from $5-10 million up to $100 million for development of the registry and from $1-2 million up to $230 million annually for its operation,[17] and from $100-400 million up to $850 million for the issuance of new counterfeit-resistent Social Security cards or identity documents[18] -- a range so broad as to signify that no one has the remotest idea what the system would cost. Nor can one compute the costs to employers and workers of delays and errors in processing eligibility checks, or the calamitous consequences to a needy worker who is erroneously identified. In fact, looking at the costs, errors, delays, and frustrations of large computerized data systems already in existence, we must ask whether we have the capacity to operate a system which would demand such accuracy and speed, perform so many daily transactions, and keep so much detailed information reliably up-to-date.

We must also ask whether the American people really want a population registry, even in the unlikely event that it might contribute to some appreciable improvement in the "illegal alien problem." For an answer, it is helpful to examine how the registry could be used to document, track, and circumscribe the lives of American citizens.

Uses of a Population Registry

Former Secretary of Labor Ray Marshall, a member of the Select Commission on Immigration and Refugee Policy, stated that he favors a "stringently safeguarded" databank to which employers could submit identifying information on job applicants to verify their identity.[19] Although he did not elaborate on what he meant by "stringent safeguards," presumably, like other proponents of such a databank, he would strictly limit its uses to the original purpose of establishing eligibility for employment by reason of citizenship or alien status.

The HEW Advisory Committee on Automated Personal Data Systems cautioned nearly a decade ago that a population registry would develop into a national dossier system.[20] Subsequent events proved the Committee's judgment correct, but by a round-about means. While we do not have anything that looks quite like the National Data Center that was being proposed by computer enthusiasts in the mid-1960's, the history of automated data systems since that time shows clearly

(1) that large personal data systems are nearly always adapted to purposes other than their originally intended limited uses, and

(2) that techniques for the electronic matching and pooling of data in separate systems have created many of the characteristics, if not the physical actuality, of a national dossier system.

One might list, almost at random, dozens of examples of new uses for once-restricted data systems, and of exchanges and matches of once-separate data systems:

- As mentioned earlier, Social Security Administration files are used to identify "illegal aliens."
- The Parent Locator Service, established pursuant to Title IV-D of the Social Security Act, allows child support enforcement officials to search "confidential" governmental and private record systems in order to trace absent parents who owe child support.
- Numerous state laws allow or actually require public and private employers to query criminal history databanks, compiled originally for police use, in order to screen out applicants convicted of certain crimes, or simply to ascertain if applicants have arrest records.
- Internal Revenue Service records can be checked by government attorneys to screen prospective jurors.
- The Veterans Administration and the Department of Health, Education and Welfare have matched their records against federal payrolls to find VA and student loan defaulters.

* The records of hundreds of federal and state public assistance programs have been matched against each other and against public and private employment rolls, to identify people receiving multiple benefits or benefits for which they are ineligible because of their earnings. Some states, such as New York and California, have even set up special wage reporting systems to make data on earnings more easily available for inter-agency matches.

* In many states, detailed case records from publicly funded services such as mental health clinics, family planning programs, and services for handicapped children have been pooled in comprehensive "human services" or "family services" databanks, where they are used for a variety of purposes from fraud control to eligibility determinations to case management review.

* Banks are required by law to preserve their customers' records much longer than they are needed solely in order to assure their availability for government investigations.

* In the future, we may see the implementation of current proposals for giving data from government records to credit reporting agencies in order to help the government recoup bad debts, for compiling Selective Service lists from Social Security and Internal Revenue Service records, and for pooling information on all federal assistance recipients into a single national benefits recipients databank.

Such examples as these do not constitute a "parade of horribles": it is not necessary to cite abuses like the violation of Census Bureau confidentiality during World War II to help the War Department find Japanese-Americans, or the political manipulations of tax and other government records that were exposed during Watergate. Many of these expanded uses are for purposes that most people would find at least rational, perhaps commendable. They demonstrate that personal data systems are useful for a wide variety of purposes beyond their originally intended parameters, and that such systems will, inevitably, be adapted to new purposes in accordance with developments and changes in public policy.

There is no reason to believe that a population registry would not follow the same course. For example, a databank already used to determine eligibility for employment on grounds of citizenship or alien status could easily be adapted to implement existing laws restricting the employment of convicted felons for certain kinds of jobs; such convictions could simply be coded into the system's database. The databank could also be useful in efforts to combat welfare fraud. If the database were expanded to include a notation of status as a welfare recipient, then the databank could automatically report the hiring of such persons to the appropriate welfare agency as a signal for cutting off benefits, and matches of the databank against various public assistance program rolls would simplify the identification of ineligible welfare recipients. If the registry contained identifiers such as photographs or fingerprints, it could be useful in apprehending criminal fugitives. It could also be an invaluable asset to the Parent Locator Service.

In time, the registry itself might be expanded to include new data subjects, such as children. There has been recurrent controversy over the enrollment of the children of "illegal aliens" in public schools; a challenge to a Texas statute barring free public education for such children is pending now before the Supreme Court.[21] A population registry could verify the identity of the children of citizens and resident aliens, allowing the public schools to check the eligibility of students when they enroll. The registry could also help prevent welfare fraud schemes for collecting benefits for fictitious children. It is not unreasonable to forecast a population registry in which children would be enrolled at birth.

Through these and similar adaptations, a national population registry would unquestionably become, as the HEW Advisory Committee predicted, a national dossier system. Whether the registry itself contained complete personal dossiers, or created such dossiers through matches with other systems, the effect would resemble the picture described by the head of a Congressional Committee which, fifteen years ago, examined the prospect of "The Computerized Man":[22]

> ...[A person's] life, his talent and his earning capacity would be reduced to a tape with very few alternatives available....
>
> Nor do we wish to see a composite picture of an individual recorded in a single informational warehouse, where the touch of a button would assemble all the government information about the person since his birth....
>
> The presence of these records in government files is frightening enough, but the thought of them neatly bundled together into one compact package is appalling....
>
> We are told that the computer can be programmed to program out derogatory and confidential information; what we fear is the ability to program it in.

Time and a greater familiarity with computerized data systems have not made the public any more sanguine about the effects of massive governmental databanks upon their individual rights and freedom. A Harris Poll published in 1979 showed that one of every three Americans believed that our society already resembled the "1984 Syndrome."[23] As a nation, we still fear what the HEW Advisory Committee described as the cradle-to-grave dossier, which would allow the government to trace, monitor, and control each individual. "American culture is rich," said the Committee, "in the belief that an individual can pull up stakes and make a fresh start, but a universally identified man might become a prisoner of his recorded past."[24]

Discussions of a population registry often focus on the potential for dramatic abuses: manipulations by corrupt or authoritarian officials to punish their political enemies or to oppress society's weakest and most disadvantaged members. We do not think it necessary to go this far to demonstrate the dangers of such a system. Rather, we think that more attention should be given to the tremendous attraction that a databank of reliable personal identification would hold for the implementation of public policy in many areas, and to the inevitability that such a databank, initially intended to do no more than verify the personal identity and eligibility of workers, would become a full-blown dossier system.

Still, the likelihood of more blatant abuses cannot be ignored, unless we simply shut our eyes to recent history. For example, employers often want to know if their applicants have histories of mental illness, heavy debt, drug or alcohol abuse, epilepsy, heart disease, cancer, or other characteristics that might in some way indicate a "bad risk": why not code databank files with a complete description of each person's disabilities? We have a precedent, in the secret coding of military discharge papers in such a way that employers could identify ex-servicemen branded by the government as "crazies," "troublemakers," or "perverts." With the growing backlash against homosexuals, it is not far-fetched to speculate that files might be coded to show sexual preference, on the rationale that homosexuals ought not be hired as school teachers or camp counselors.

Political dissenters might be prime targets for special attention. One need not look so far back as the McCarthy blacklists to find examples. The COINTELPRO operations of the FBI in the 1960's and '70's illustrate that the government has gone to great lengths to undermine political causes like the civil rights and anti-war movements by discrediting their leaders, among other means, by making it difficult for them to find employment. There is every reason to think that similar episodes will be repeated -- or at least attempted -- in the future. The omens are visible even now, for example, in the so-called "Blitz Amendment" approved last winter by the Senate, which would have denied federally funded job training under CETA to anyone publicly advocating the violent overthrow of the government within the past five years. If some similar political bar to employment should ever become law, political codes could be a routine entry into an employment eligibility databank. Even without legislation, a resurgence of COINTELPRO-type operations in an increasingly intolerant political atmosphere could result in the use of secret codes to "mark" dissenters.

Nationality and ancestry might be another focus of interest. When the government tried to round up all the Iranian students in America during the hostage crisis, it was hampered because Immigration and Naturalization Service records could not pinpoint their exact locations. The likelihood of other such crises in the future, along with growing fears of international terrorism, might be a rationale for expanding the database to include all aliens, whether or not they are employed, and to code the files of citizens as well as aliens for national origin or ancestry. Nationality codes in a population registry would have been useful when the Japanese-Americans were rounded up in the 1940's; they might prove useful again if the government decides to keep track of the potential "sympathizers" of America's adversaries in a diplomatic crisis or war.

Because employment -- or the inability to obtain it -- are central factors in determining a person's quality of life, a dossier system that can so easily be used to control the employment opportunities and trace the movements of hundreds of millions of people may be the most powerful tool for social control that any government has ever devised. Neither good intentions nor supposedly "stringent safeguards" can, in the long run, prevent its perversion and abuse.

The Standard Universal Identifier

It is too late to argue that the Social Security number should not be used as the standard universal identifier. At least as far as governmental record-keeping is concerned, the SSN is already a universal identifier. There is scarcely a state or federal personal data system that does not use the SSN, from tax and welfare agencies to schools, libraries, and licensing authorities. In addition, records of many private transactions, particularly those involving bank accounts and securities that have tax implications, are required by law to use the SSN.

In 1973 the HEW Advisory Committee warned that the SSN, though not a standard universal identifier in the strictest technical sense, could become so for all practical purposes simply by being used as one. It also noted that the federal government itself was largely responsible for the expanding use of the SSN as a universal identifier.[25]

The HEW Committee examined the reasons that made people fear the standard universal identifier, despite its practical advantages for record management. It predicted that "[t]he bureaucratic apparatus needed to assign and administer an SUI [standard universal identifier] would represent another imposition of government control on an already heavily burdened citizenry." It would lead to a system of mandatory personal identity cards: "Loss or theft of an SUI card would cause serious inconvenience, and the mere threat of official confiscation would be a powerful weapon of intimidation." It would create a national dossier system that "would make it much easier for an individual to be traced, and his behavior monitored and controlled, through the records maintained about him by a wide range of different institutions....A permanent SUI issued at birth could create an incentive for institutions to pool or link their records, thereby making it possible to bring a lifetime of information to bear on any decision about a given individual."[26]

For a time, the Committee's cautions were heeded. In the Privacy Act of 1974, Congress forbade new uses of the SSN in government programs unless Congress itself authorized them.[27] But very soon thereafter, Congress reopened the doors by authorizing the states to use the SSN for the administration of tax, welfare, driver's license, and motor vehicle registration laws, and for the Parent Locator Service.[28] While there have been a few challenges to new governmental uses of the SSN since then -- for example, a suit opposing use of the number for draft registration as a violation of the Privacy Act[29] -- it is clear that Congress will allow new uses that appear to enhance the accuracy and efficiency of data systems management. A databank to verify identification and employment eligibility would undoubtedly be authorized to use the SSN.

In the meantime, the Social Security Administration has taken steps to correct the SSN's deficiencies as a reliable standard identifier. In particular, it has implemented more stringent procedures for personal identification by applicants and attempted to eliminate the issuance of multiple numbers to a single individual.[30] But the SSA's efforts to create a more secure identification system are largely for the benefit of other governmental programs, a point the SSA emphasized when it noted that the benefits of issuing new tamper-resistent cards "would accrue only to other agencies because perpetrating fraud against the social security system by mere possession of a counterfeit or fraudulently obtained social security card is practically impossible."[31] By administering the standard identifier for a wide variety of governmental programs, the SSA has effectively become that "bureaucratic apparatus" described by the HEW Committee.

We have seen that the matching and linkage of separate record systems, as predicted by the HEW Committee, have become commonplace. It is true that records could be exchanged, matched, and linked without the SSN.[32] Nonetheless, the fact that so many systems share the same identifier has been a strong incentive to record-matching, and has encouraged what both the HEW Committee and the Privacy Protection Study Commission called a "drift" toward the universal identifier.[33] An identification and employment eligibility databank using the SSN would accelerate that "drift."

While the standard identifier and large-scale record-matching are accomplished facts in governmental data systems, we believe that a population registry using the SSN would foster two other developments foreseen by the HEW Committee: increased record-matching among private agencies and between public and private agencies, and ultimately the creation of a mandatory identification card.

As was mentioned earlier, banks and brokerage houses are required by law to obtain their customers' Social Security numbers. Employers of course must do so to report earnings to the Social Security System. Other private agencies and businesses are free under the law to use the SSN if they wish to. Many do. Among them are hospitals, insurance companies, credit reporting agencies, utilities, credit-card companies, check-cashing services, colleges, department stores, airlines, hotels, unions, charities, and even undertakers. The growing use of the SSN among private agencies coincides with a growing exchange of information and matching of records between public and private agencies, for instance, the example noted earlier of matches between private employer payrolls and the welfare rolls. A population registry will seek information from employers and other private agencies and in return will give them information. Such exchanges can only encourage universal use of the SSN as an identifier, which in turn will encourage further pooling of records. Eventually, the distinctions between public and private agency record systems -- faint as they are even now in some cases -- may disappear altogether.

Among current suggestions for implementing sanctions for hiring "illegal aliens" is the creation of a databank without an identity document. Some favor this approach because it appears to circumvent a major problem of discrimination that might arise from the use of cards, namely, that only people who look or sound as if they could be foreign would have to show their cards to prove their eligibility, while some employers might prefer to eliminate such applicants altogether in order to save themselves the trouble of determining whether the documents are genuine. A databank, it is argued, would prevent discrimination because all applicants would be screened by the government, and employers would have no discretion. (No one has explained, however, why it should be assumed that the government itself would not discriminate by subjecting minorities to special scrutiny and harassment.)

But in fact it is likely than an identity card would be introduced sooner or later. The very existence of a databank that purports to contain "foolproof" identification would create a demand for identity documents so that its benefits could be enjoyed by people engaged in all sorts of public and private transactions. (A current analogy is the "non-driver's license" issued by states for people who do not drive but want the benefits of a driver's license as ID.) People would be asked to show their cards when they apply for government assistance, cash a check, apply for a job, or open a department store charge account. Such identification would be in great demand as a substitute for the many unreliable forms of ID now in circulation.

An identity card with just a name, photo, and Social Security number would be useful in many daily transactions. But the card could be even more useful if it conveyed further information. For example, if the cards of welfare recipients were coded, they might be discouraged from applying for multiple benefits. If the cards of ex-felons were coded, they might be discouraged from applying for certain kinds of jobs. If the cards of people defaulting on government loans were coded, they might be discouraged from trying to take out new loans before paying off the old ones. Whereas information in the registry can be used to decide that a person is ineligible for a particular job or benefit, the same information on an identity card could deter people from applying in the first place. Such deterrence might save everyone time and trouble.

These examples may seem improbably now, but in the long run, if enough people would find them useful, they could very well become reality. And the technology is available to create a very sophisticated system of electronically coded cards and communications. After all, in supermarkets around the country old-fashioned printed price labels are being replaced by machine-readable black-stripe codes, and some customers are paying at the register with coded plastic cards that transfer money from their bank accounts directly into the supermarket's account. Such technology could create identity documents with machine-readable codes and allow direct electronic communication with a central dossier system.

The proliferation of uses of the SSN over the last fifteen or twenty years by both public and private data systems has facilitated the widespread exchange and pooling of personal data. But there are still many practical impediments to the creation of a standard universal identifier and a cradle-to-grave national dossier system. The establishment of a population registry to verify personal identification and employment eligibility, and of its concomitant, the "secure" identity document, will do much to remove those impediments, at incalculable cost to the privacy and civil liberties of our citizens.

Conclusion

In the debate over the privacy implications of immigration policy, perhaps the most important factor to bear in mind is that we are not writing on a clean slate.

In his seminal work Privacy and Freedom, published in

1967, Professor Alan Westin assessed the contemporary computer revolution and its potential effects on civil liberties:[34]

> ...[A]s philosophers remind us in a different context, knowledge is power. The issue of privacy raised by computerization is whether the increased collection and processing of information for diverse public and private purposes, if not carefully controlled, could lead to a sweeping power of surveillance by government over individual lives and organizational activity. As we are forced more and more each day to leave documentary fingerprints and footprints behind us, and as these are increasingly put into storage systems capable of computer retrieval, government may acquire a power-through-data position that armies of government investigators could not create in past eras.

Of course, by 1967 computerization both in government and in private business was far advanced and had already brought significant alterations in the life styles of Americans individually and collectively. But the Orwellian prospects of "1984" lay far in the future, and there seemed to be time and opportunity for the nation to make choices that would preserve traditional American freedoms against the incursions of technological change. And in fact many important steps were taken. Congress and the state legislatures, administrative agencies, the courts, and private business all have acted to create "information rights" -- the rights of individuals to learn who is keeping files on them, to examine and correct their files, and to find out how their files are used and who sees them. Legislation like the Privacy Act, the Fair Credit Reporting Act, and the Family Educational Rights and Privacy Act acknowledges the need for people to exercise some control over data that will be used to make decisions that can profoundly affect their lives.

But other aspects of national information policy have not received the same attention. In particular, we have failed to stem the consolidation of data through the exchange, linking, and matching of separate record systems, tapping by agencies into each other's systems, and step-by-step expansion of systems to serve new uses. These developments have been gradual, almost invisible, usually in implementation of public policies that many people support: governmental efficiency, reduction of fraud and waste, better delivery of services, law enforcement. But the process is now far advanced, and we are close to creating that "sweeping power of surveillance by government over individual lives" that Westin described, not deliberately, but as the increment of many expedient but short-sighted policy decisions.

That is why the present controversy over immigration policy takes on special importance. To establish a population registry and an identity document, or either of them alone, could prove the irreversible last step in the loss of personal privacy that all Americans have felt so acutely.

1. "Inhibiting Illegal Migration: Employment Eligibility and Employer Responsibility," working paper prepared for the Select Commission on Immigration and Refugee Policy, pp. 12-15.

2. U.S. Immigration Policy and the National Interest, Final Report and Recommendations of the Select Commission on Immigration and Refugee Policy to the Congress and the President of the United States, March 1, 1981, p. 61.

3. Ibid., pp. 66-67.

4. Ibid., p. 68.

5. Ibid., p. 69. Commission members voted 9-7 in favor of verification by some existing form of identification, and 8-7 with one "pass" in favor of "some system of more secure identification," thus failing to clarify its views on specific proposals for verification of eligibility that would support a system of employer sanctions. Ibid., p. 61.

6. New York Times, May 7, 1981, Op Ed Page, "Mortifying Searches," by Chuck Hardwick.

7. The Criminal Use of False Identification, Report of the Federal Advisory Committee on False Identification, U.S. Department of Justice, November 1976.

8. The Tarnished Golden Door: Civil Rights Issues in Immigration, Report of the U.S. Commission on Civil Rights, September 1980, p. 65.

9. Federal Advisory Committee on False Identification, op. cit.; also Reissuing Tamper-Resistant Cards Will Not Eliminate Misuse of Social Security Numbers, Report by the Comptroller General of the United States, General Accounting Office Report No. HRD-81-20, December 23, 1980.

10. U.S. Commission on Civil Rights, op. cit., p. 65; also Federal Advisory Committee on False Identification, op. cit., p. 75, which suggests that criminal activity, especially organized crime, would be encouraged by the availability of presumptively valid identity documents.

11. Records, Computers, and the Rights of Citizens, Report of the Secretary's Advisory Committee on Automated Personal Data Systems, U.S. Department of Health, Education and Welfare, July 1973, p. 111.

12. Personal Privacy in an Information Society, Report of the Privacy Protection Study Commission, July 1977, Chapter 16.

13. U.S. Commission on Civil Rights, op. cit., p. 65.

14. Federal Advisory Committee on False Identification, op. cit.; Domestic Council Committee on Illegal Aliens, Preliminary Report, December 1976; U.S. Commission on Civil Rights, op. cit.

15. "Inhibiting Illegal Migration," op. cit., p. 10.

16. Domestic Council Committee on Illegal Aliens, op. cit., pp. 89-95.

17. Cf. "Inhibiting Illegal Migration," op. cit., p. 7, and Select Commission, op. cit., Appendix B, Statement of Commissioner Elizabeth Holtzman citing staff estimates, p. 343.

18. Cf. "Inhibiting Illegal Migration," op. cit., p. 7, and Reissuing Tamper-Resistant Cards, op. cit., p. 25.

19. Select Commission, *op. cit.*, Appendix B, Statement of Commissioner Ray Marshall, p. 364.

20. Secretary's Advisory Committee, *op. cit.*, p. 111.

21. *Pyler* v. *Doe*, No.80-1538.

22. *The Computer and Invasion of Privacy*, Hearings Before a Subcommittee of the Committee on Government Operations, House of Representatives, 89th Congress, 2d session, July 26, 27 and 28, 1966, statement by Chairman Cornelius E. Gallagher, pp. 2-3.

23. *The Dimensions of Privacy*, A National Opinion Research Survey of Attitudes Toward Privacy, Conducted for Sentry Insurance by Louis Harris & Associates, Inc., and Dr. Alan F. Westin, 1979, p. 5.

24. Secretary's Advisory Committee, *op. cit.*, pp. 111-112.

25. *Ibid.*, pp. 121-122.

26. *Ibid.*, p. 111.

27 Public Law 93-579, Section 7.

28. Tax Reform Act of 1976, Public Law 94-455, Section 1211.

29. *Wolman et al.* v. *U.S.*, Civ. Action No.80-1746, 49 U.S.L.W. 2370 (D.D.C., November 24, 1980) upheld the challenge. The government has appealed.

30. *Reissuing Tamper-Resistant Cards*, *op. cit.*

31. *Ibid.*, p. 25.

32. Privacy Protection Study Commission, *op. cit.*, p. 613.

33. *Ibid.*, p. 618, and Secretary's Advisory Committee, *op. cit.*, pp. 121-122.

34. Alan F. Westin, *Privacy and Freedom*, Atheneum, New York, 1967, p. 158.

SHORTCOMINGS OF THE SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY'S RECOMMENDATIONS ON ENFORCEMENT OPTIONS

(SUBMITTED BY: ALIEN RIGHTS LAW PROJECT; AMERICAN FRIENDS SERVICE COMMITTEE; IMMIGRATION LAW CLINIC, COLUMBIA LAW SCHOOL; INSTITUTE FOR PUBLIC REPRESENTATION, GEORGETOWN UNIVERSITY LAW CENTER; MEXICAN-AMERICAN LEGAL DEFENSE FUND; NATIONAL IMMIGRATION PROJECT OF THE NATIONAL LAWYERS GUILD; NATIONAL OFFICE OF JESUIT SOCIAL MINISTRIES; OFFICE FOR CHURCH IN SOCIETY, UNITED CHURCH OF CHRIST)

The Select Commission on Immigration and Refugee Policy has identified the issue of "undocumented/illegal migration" as the "most pressing" it considered during its deliberations, and concluded that most citizens believe such migration must be stopped. The Select Commission therefore proposes, in broad and unspecific terms, better enforcement of existing immigration and labor laws and, most significantly, the imposition of sanctions upon employers who hire undocumented workers. These employer sanctions are to be accompanied by an unspecified system of national identification for employment purposes. The Select Commission also proposes to legalize a proportion of the present undocumented population.

After careful consideration, we have concluded that the Select Commission's recommendations fail to address critical questions about the likely cost and the likely effectiveness of a scheme which emphasizes regulation of individual hiring transactions rather than a systematic attack on the social and economic determinants of migration. With respect to costs, we believe that the Commission's recommendations pose serious dangers to social order, community health, civil rights and civil liberties. They will also result in a cumbersome and all-pervasive regulatory scheme which will cost billions of dollars and impose substantial regulatory burdens on employers. With respect to effectiveness, there is no assurance the Commissions proposals will actually provide the results sought. Further research and thought must be devoted to the analysis of undocumented migration, its characteristics and its dynamics. The effect of illegal immigration on U.S. society must be described with greater specificity and exactitude, so that an effective and precisely tailored deterrent to it may be devised. In sum, there must be fuller evaluation of the relative effectiveness and the relative costs, both social and financial, of border enforcement, of employer sanctions or of enforcement of labor laws.

EFFECTIVENESS

A. Are the Commission's Recommendations Appropriate Responses to the Problem?

The Commission has failed to specify in detail what it considers to be "the problem" associated with undocumented immigration. While the Commission's Final Report lists a series of problems which may be associated with undocumented migration, such as the impact on social services, job displacement, wage depression, and the potentially adverse effects on U.S. society of an exploitable underclass of persons fearing apprehension, it fails to state precisely which of these problems its recommendations are intended to resolve. Without a clearer sense of what the various aspects of the problem are, it is impossible to think about what types of measures will effectively meet it.

1. Impact on Social Services

The Commission concludes that undocumented aliens do not place a substantial burden on social services. This conclusion is surely correct. Indeed, research suggests that they may even make a positive contribution to social services funding.*/ In any case, this factor cannot form the basis for any conclusions concerning the impact of illegal migration, at least until a better understanding is reached of precisely what types of undocumented aliens use precisely what types of social services. Without such information, there is no reliable way to assess whether the provision of social services to undocumented aliens contributes sufficiently to the economic and social welfare of specific communities to be considered a cost-effective expenditure. The Commission offers no proposals precisely tailored to this question.

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*/ See Los Angeles County Chief Administrative Officer Tax Effort and Service Cost of Illegal Aliens, (March 1975); San Diego County Human Resources Agency, A Study of the Socio-Economic Impact of Illegal Aliens on the County of San Diego, (January 1977); D. North & M. Houston, The Characteristics and Role of Illegal Aliens: An Exploratory Study, Dept. of Labor.

2. Impact on Employment and Wage Levels

While the Commission correctly discounts the impact of undocumented immigration on social service costs, it recognizes that there are two other types of possible negative economic impact from undocumented immigration. One is direct displacement of legal workers. The other is the depression of wages by undocumented workers who, for a variety of reasons, will arguably work for less. The Commission's treatment of these issues is superficial and inconclusive. It concedes that economists specializing in these questions continue to disagree about whether illegal immigration causes either job-displacement or wage-depression, or both. Without determining the costs, in this respect, of undocumented immigration, it is impossible to project whether any enforcement scheme is likely to be cost-effective.

Furthermore, the type of enforcement schemes which are proposed must be shown to be precisely responsive to the specific economic problems created by undocumented immigration. Nowhere has the Select Commission established, or even hypothesized, the relative importance of direct job displacement and wage depression. It has not inquired into what proportion of the undocumented population works under conditions and wages competitive with legal workers and what proportion works for less. It has, instead, devised a general enforcement package which, one supposes, is to deal with both problems.

The inadequacy of such an approach is readily apparent, since the wage-depressing effect of illegal immigration suggests different solutions from those suggested by direct job displacement. The Commission proposes a heavy emphasis on employer sanctions and a subordinate emphasis on enforcement of labor laws. However, were it to be determined that a substantial proportion of the undocumented population is composed of aliens who are employed at less than minimum wage or in illegal working conditions, then it would be necessary to shift some emphasis to the enforcement of labor laws. This is because one more legal penalty, in the form of employer sanctions, in addition to those which a violator of labor laws already risks daily, will have an uncertain and incomplete effect. It will increase an employer's risk by an increment that will be balanced against calculations about the costs of compliance. The more vigorous enforcement of labor laws, exemplified in the Department of Labor's Employers of Undocumented Workers Program, will, however, be more precisely tailored to deterring the employment of undocumented workers under conditions and wages which have negative social effects. Since such enforcement will impose on an employer the costs which he seeks to avoid by violation of the laws, his incentive to hire undocumented workers will be significantly reduced.

It must be conceded that employer sanctions will be effective to some extent in deterring the employment of undocumented aliens who work under conditions identical to those of legal workers. However, unless this section of the undocumented population is truly substantial, employer sanctions may represent an overbroad and costly solution. There is also a total failure, in the Commission's Report, to consider the factors which may account for the hiring of undocumented workers when the employer does not intend to exploit them by paying illegally low wages. Further consideration is needed of the extent to which such factors will prevail, in an employer's business judgment, over the duties imposed by an employer sanctions law.

3. Other Impacts on U.S. Society

The Commission concludes that large scale undocumented immigration encourages the development of an "underclass", and that the existence of such an underclass has pernicious effects on U.S. society by breeding disregard for immigration and labor laws and leading to the exploitation of its members.

However, there is a serious risk that the Commission's proposals will not only not eliminate such an underclass, but actually expand it.

The Select Commission's recommendation of employer sanctions is premised on the assumption that undocumented immigrants are attracted to this country by job opportunties. Therefore, reasons the Commission, the penalizing of employers who provide job opportunities will effectively deter such immigration. However, as indicated by a range of research on the question,[*] this is a dangerously one-dimensional analysis of the dynamics of international migration.

Research suggests that economic incentives for migration also arise from the lack of economic opportunity at the source of migration. This "push" factor will often work regardless of the availability of jobs at the migrant's destination. (This is certainly apparent in the migration from countryside to city within developing countries). Thus, even if job opportunity in the U.S. were to be totally closed to undocumented immigrants, one could expect illegal immigration to continue.[**]

Illegal immigration will also continue because of "pull" factors in the U.S. which are unrelated to job opportunities. Quasi-economic incentives to migrate are found in the social and standard-of-living benefits of life in the U.S. which an undocumented worker will perceive. To one fleeing landlessness or bare subsistence in a third world village or city, even a marginal existence in the United States will pose an attractive alternative.[***] One must also reckon with the impulses provided by family ties which induce illegal immigration and provide, along with cultural organizations, an expectation of aid and comfort in confronting an unwelcoming society.

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[*] See, e.g. Appendices to Testimony of American Friends Service Committee to the Select Commission, San Francisco, June 1980. Milton Morris & Albert Mayio, Illegal Immigration & U.S. Foreign Policy, Dept. of Labor, Oct. 1980.

[**] Studies have just begun in Mexico of some of the source-places of migration to the United States. These studies will be conducted under government anspices, and will establish much more clearly than the Select Commission's speculations the causes of migration from Mexico.

[***] See Stanley L. Friedlander, Labor, Migration and Economic Growth. (Cambridge, Mass. MIT Press 1965), page 128.

If any of these factors is important in encouraging illegal immigration, then it is necessary to reassess the Commission's claim that its proposal will eliminate an "underclass" of undocumented workers. If employer sanctions are successful in closing off a significant portion of the job market, but unsuccessful in controlling illegal immigration, the presence of an unemployable population will have either or both of the following effects: 1) An outlaw economy will develop, rife with abuses, exploitation and violations of labor laws, as lawless entrepreneurs aspire to a high return on investment to compensate them for the risks of hiring undocumented workers; 2) The bulk of the unemployable population will turn into a pariah population deprived of legitimate jobs, with little recourse but crime or delinquency and with no way to maintain its health and other social welfare. This population will include not only new arrivals, but also the 40% of the undocumented aliens already in the U.S. which the Commission estimates will be excluded if its legalization program is based on a two year residency requirement. The disastrous effects of this on general social order and community health are apparent.[*/] Thus, employer sanctions will threaten the creation of precisely the "underclass" which the Commission proposes to eliminate.

B. Will the Commission's Recommendations be Successful?

Even if the Commission's recommendations were carefully tailored to address particular problems associated with illegal immigration, there remains a serious question about the practical viability of those recommendations.

1. Employer Sanctions

There is considerable question about how effectively an employer sanctions scheme, of the kind proposed by the Commission, can be enforced. If it appears that the effectiveness of such a

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[*/] The problem will be further aggravated if, as has been proposed in some quarters, the legalization program is not implemented until employer sanctions are effectively in place.

scheme is open to serious question, then one must reconsider whether the dangers to civil rights, civil liberties and employer and worker autonomy are merited by such a scheme. One should also, in that case, consider alternative measures for inhibiting the arrival and employment of undocumented aliens.

One essential flaw in the Commission's recommendations is their lack of specificity. They do not clearly recommend a standard of liability for the employer. Assuming that the standard of liability will be "knowing employment of an undocumented alien", it is not clear what will constitute a showing of knowledge. It is also unclear whether only civil penalties will be imposed, or whether these will be accompanied by criminal penalties in egregious cases. Finally, the Commission makes no precise recommendations on an I.D. system to establish eligibility for employment.

Yet these are precisely the kinds of details which will determine the effectiveness (and the costs to social values) of any employer sanctions scheme. Without such details, it is impossible to determine how the sanctions proposal would be enforced. For example, the Commission suggests targeting larger businesses for enforcement efforts. However, it makes no attempt to show that this would be an effective targeting of enforcement resources. Similarly, the Commission failed to consider whether, in criminal prosecutions, one may expect overburdened U.S. Attorneys to exercise considerable prosecutorial discretion in decisions about when and whom to prosecute. The effect of this factor on the scheme's effectiveness may well be radical. It is also important to consider how juries will behave if criminal sanctions are imposed. It is certainly possible that local sentiment in communities with a history of or perceived need for employing undocumented workers will result in an unwarranted proportion of acquittals. This would have a critical effect on the actual success of employer sanctions.

If a system of graded civil penalties is to be relied upon for effective enforcement of employer sanctions, then it is necessary to look at the capacity of existing regulatory agencies to sustain such an effort. There is simply no practical consideration in the Commission's Report of how much civil enforcement will be necessary to effectively deter lawbreakers, and of the effect of such an effort on the other duties of the agencies concerned and on their budgets.

Finally, one must ask what likelihood there is that employer sanctions will, rather than deterring employment of undocumented workers, be internalized as a business cost, to be passed on to the consumer in the form of higher prices or to the worker in the form of lower wages. It seems likely that any but an extremely harsh penalty will be so internalized, particularly by those who regularly hire undocumented workers for reasons of profit. On the other hand, if sufficiently harsh penalties are adopted, they will necessitate expensive enforcement efforts in pursuit of a scheme whose effectiveness and value remain uncertain.

2. Border Enforcement

The Select Commission has also recommended increased conventional enforcement accompanied by training programs and safeguards to diminish the instances of violations of the civil rights of legal residents. While we applaud the suggestion that structural changes be made which will decrease the frustration level and increase the sensitivity of border patrol officers, we believe that the Commission's analysis perpetuates the myths which underlie the failures of present policies.

Implicit in the Commission's emphasis and the terms in which it describes its recommendations is the assumption that illegal immigration is a "Mexican problem." Yet, the Commission itself has recognized that Mexico accounts for less than a half of this immigrant stream. The emphasis on border enforcement, in practical terms enforcement at the Mexican border, leaves unaffected at least half of the problem. It also fosters discriminatory treatment of Hispanic citizens and legally resident aliens who live in the border areas.

We are concerned also that increased border enforcement in practice means militarization of the border enforcement effort. This has and will result in serious violations of the civil rights of Hispanics living in the border area. Further, it is likely to contribute to the adversary perceptions of both INS and the border Hispanic communities, and to thus hinder, rather than help, the effort to establish an effective and influential presence in these communities. Thus, militarization of the border enforcement effort will endanger whatever gains may be expected from improved training for INS officers.

There is some question about how effective border enforcement can be in the inhibition of illegal immigration. We note that many continue to risk apprehension despite increased obstacles. It is also axiomatic that the length of our land boundaries presents particular problems. Most critical, however, is the fact that economic and social factors, quite unrelated to the difficulties of entry, continue to encourage migration. It is therefore imperative that the purposes of border enforcement be more exactly delineated, and that any increased emphasis on it be warranted by the realities of the total situation.

COSTS OF PROPOSED ENFORCEMENT METHODS

The Commission has not only failed to evaluate fully the claimed benefits of an employer sanctions scheme, it has also failed to fully consider the costs of such a scheme. These costs are social as well as financial. The Select Commission's recommendations will endanger civil rights, civil liberties, and the autonomy of both employers and employees.

A. Financial Costs

There is total uncertainty about the financial costs to the government of any of the enforcement options proposed by the Commission. This is particularly so of employer sanctions, since there are no similar existing programs which may be used as a basis for projection. It is quite unclear what will have to be spent to establish a secure and nondiscriminatory I.D. system, or what will be necessary to effectively enforce employer sanctions. One may at least hypothesize that the more secure the I.D. system and the more effective the enforcement mechanism, the greater will be the cost.

The Select Commission has failed to consider the relative costs of each option in deciding the relative importance to be accorded each one. There is no indication of any disciplined attempt to establish the value for money promised by any one proposal. While it might have been difficult to establish definite figures on cost, even a consideration of rough estimates should have occasioned caution. The lowest estimate, prepared by the Commisssion's staff, of the cost for an I.D. card system alone is $100 million in start-up costs and an annual cost of $180 to $230 million. A 1978 estimate, prepared by a consultant to the Commission and based upon the costs of the new secure alien registration card estimated the start-up cost at $400 million. Each of these has been widely critizised as a gross under-estimate. The cost of a data bank is estimated at $87 million in start-up costs and annual costs starting at $1/2 billion and reduced over 6 years to $200 million. This, of course, does not include collateral enforcement costs, which must be substantial in order for employer sanctions to be effective.[*/]

The Commission's Report also lacks any consideration of the costs to employers of compliance with the regulatory scheme. A nationwide scheme such as employer sanctions will inevitably impose pervasive costs on the national economy. Such costs must be established with exactitude or with reliable methods of projection if the cost-effectiveness of employer sanctions is to be determined.

[*/] By contrast, the 1981 budget for the entire wage and hour enforcement program of the Department of Labor, of which the Employers of Undocumented Workers program is only a small part, was $65,642,000.

B. Social Costs

The Select Commission recommends legislation which would prohibit employers from hiring any worker who did not, in some (unspecified) way, prove that he was authorized to work in the U.S. In the form proposed by the Commission, such legislation is likely to have adverse effects on equal employment opportunity, on the mobility of labor, on the autonomy of employers and employees, on the civil liberties of all citizens, and on social order and community health.

1. Employment Discrimination

The lack of specificity in the recommendations about the standard of liability to be imposed on employers raises great concern. An employer may attempt to protect himself from such liability by refusing to hire anyone who "might be foreign". This will clearly result in widespread discrimination against minority citizens and permanent resident aliens of "foreign" (e.g. Hispanic or Asian) appearance. Even if the standard of liability were more strictly defined, it is not clear that employers, lacking legal sophistication, would be able to distinguish acts which carry liability from those that do not, or among the varieties of possible work authorization status. Thus, an employer, faced with a permanent resident alien, might mistakenly deny him employment on the understanding that "aliens" may not be hired.

In order to protect employers and employees alike from such uncertainties and mistakes, the Select Commission has recommended that some system of identification be provided for hiring purposes. Unfortunately, the Commission fails to recommend any particular system. Furthermore, the options which it presents are not described in any detail.

Consequently, the issue remains open for consideration and debate. We believe several basic principles must be safeguarded. None of the schemes for an ID system which were designed or considered by the staff of the Select Commission were successful in providing such safeguards. The lack of any detail in the Commission's recommendations on I.D. systems reflects none but the most superficial consideration of the dangers of such systems and the need for particular safeguards.

In addition to these concerns regarding potential discrimination by employers, there is also some question about whether the criteria for enrollment in an I.D. system and for reissuance of lost documents allow equal access for minorities, legally resident aliens and economically marginal individuals. It is also likely that the procedures for verifying authority to work will subject minorities and legally resident aliens to extra scrutiny or delay in hiring.

2. Mobility of Labor

For both employers and employees, an employer sanctions system will introduce new burdens on the formation of the employment contract. Such burdens will inhibit the mobility of labor to an indeterminate extent. This will particularly be the case if the procedure for enrollment or verification for work authorization is subject to technological or bureaucratic inefficiency, or if minority persons begin to view the hiring process as part of a system which subjects them to special scrutiny because of their appearance.

3. Autonomy of Employers

Employer sanctions systems not only impose regulatory costs on an employer in pursuit of an uncertain economic "benefit." They also interfere with fundamental business decisions about how, whom and when to hire. Any scheme which substitutes abstract regulatory considerations in the hiring decision for more knowledgeable and business-related considerations must be carefully scrutinized. This particular scheme is a novel imposition on businesspeople, unprecedented in scope, and quite unlike the strictures on business autonomy which are now widely accepted. Moreover, the Commission's recommendations take no account of recent judicial elaborations of an employer's freedom from warrantless searches.

4. Autonomy of Employees

The Commission fails to consider the implications of a system which will delegate government enforcement functions to private parties, and which will grant employers substantial new powers over those applying for jobs. In this sense the employer sanctions system will institutionalize pre-employment inquiries into non-job-related factors, thus reversing a decade of efforts to eradicate such inquiries from hiring decisions.

5. Civil Liberties

It is unfortunately true that the more effective and less discriminatory any system of identification is, the more of a threat it poses to civil liberties. The storage and retrieval of information in a national data bank raises concerns, particularly since its function is to regulate the employment relationship. Since work is essential to the enjoyment of any substantial social goods, one must be wary of allowing government to determine who may and may not work. If the universal identifier is to be a card, then one must fear harrassment by local police officers who will selectively demand that it be produced, much as they demand alien registration cards from Hispanic citizens in many localities today.

6. Social Order & Community Health

As explained above, if employer sanctions do not succeed in deterring virtually all illegal immigration, they will result in the creation of a jobless population of alien persons, excluded from society and economic opportunity. The Commission has not considered the potential economic and social costs of such a result.

ALTERNATIVES

In our view, the Commission has recommended employer sanctions without fully considering either the potential benefits or the potential costs of such a system. We also believe the Commission has not fully evaluated the alternatives to sanctions, which may offer significant advantages with few of the other risks outlined above.

A. Enforcement of Existing Labor Laws

The discussion above of economic factors which must be considered suggests that the enforcement of current labor laws is likely to mitigate the adverse social effects of employment of undocumented workers at or below minimum legal conditions and wages. It will also remove the employer's incentive to hire undocumented workers, and thereby restrict the availability of jobs for them. If undocumented workers who work at or below minimum legal conditions and wages are a significant proportion of the total undocumented population, then enforcement of labor laws may deserve a more central place in any enforcement scheme than the Commission has allowed.

B. The International Dimension

A systematic and cost-effective approach to illegal immigration would address the issue of social and economic development in the sending countries. Policies on foreign aid and private U.S. investment which, rather than emphasizing abstract, numerical indicia of development, are designed to create widespread employment and other economic opportunities, will promise a triple benefit. Such policies will remove the "push" factor of destitution, and reduce the "pull" factor of economic and social differentials, thus inhibiting illegal immigration. They will also mitigate the potential for political instability in the sending countries, thereby reducing the need for military and police aid to allies, and also reducing the likelihood of unmanageable mass migrations of refugees.

CONCLUSION

The Select Commission's recommendations on enforcement options suffer from several weaknesses. There is no clear statement of the problem to be solved, and no clear indication of how the recommendations will solve the general problem of illegal immigration. The package recommended by the Commission is not cost-effective. It is clear that it will entail the expenditure of substantial government funds for enforcement efforts and the creation of a bureaucracy to administer an identification system, will impose economic costs on employers, and will pose dangers to fundamental social values. However, there is no indication that the recommendations will provide the results sought.

We propose that the recommendations be rejected; that the dynamics of migration to the U.S. be more clearly established; and that more appropriate and cost-effective measures, such as international policies and increased enforcement of labor and wage - reporting laws, be devised to meet the problem.

UNIVERSITY OF ILLINOIS AT CHICAGO CIRCLE
DEPARTMENT OF ECONOMICS
BOX 4348, CHICAGO, ILLINOIS 60680
TELEPHONE 996-2684

May 5, 1981

UICC

Senator Charles E. Grassley
U.S. Senate
The Capitol
Washington, D.C. 20510

Dear Senator Grassley:

Enclosed is my paper "Criteria for the Reform of Immigration Policy". You may recall that I referred to this paper in my letter of March 18 to President Reagan regarding his comments on amnesty for illegal aliens, a copy of which is enclosed.

My study reviews current immigration policy as well as what is known on the economic progress and economic impact of immigrants. It shows that current policies, and even more so the recommendations of the Select Commission on Immigration and Refugee Policy, are not consistent with the Reagan Administration's efforts to reduce the size of the income transfer system and promote more rapid economic growth. I propose an alternative rationing system that focuses on the skills of visa applicants which is consistent with the Administration's domestic policy objectives.

I would be willing to discuss my analysis and policy recommendations with you or your staff.

Sincerely,

Barry R Chiswick

Barry R. Chiswick
Research Professor

BRC/mb

Enclosures

UNIVERSITY OF ILLINOIS AT CHICAGO CIRCLE
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BOX 4348, CHICAGO, ILLINOIS 60680
TELEPHONE 996-2684

March 18, 1981

President Ronald Reagan
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Dear President Reagan:

This is in regards to your recent comments concerning illegal aliens and Mexican immigrants. In an article on your March 3 interview with Walter Cronkite, The Washington Post reported you were "intrigued by a proposal that the Mexican-American border be opened to free movement by the citizens of both countries and that Mexicans currently in the U.S. illegally be given the right to remain" (3/4/81, P.A2).

Granting amnesty would increase the relative number of low-skilled workers in the U.S. labor market in three ways. First, perhaps several million family members now in Mexico would seek to migrate to the U.S., and over time could do so legally. Low skilled wives, youths and parents would then enter the labor market and would be eligible for income transfers. Second, many of the adult male illegal aliens currently in the U.S., predominantly low-skilled workers, would no longer return home during the seasonal or cyclical slack periods in economic activity, but rather they would remain in the U.S. with their families. Third, either an open door policy or the prospect of repeated amnesty would encourage additional immigration of low-skilled workers from Mexico. Indeed, illegal immigration increased sharply when President Carter proposed amnesty in 1977, and similar statements by your Administration could have a similar effect.

A laissez faire immigration policy with Mexico made sense in an earlier era. At a time when there were no public transfers to provide assistance to the needy, and when changes in the income distribution were not considered to be of public policy relevance, the immigration of a large group of low-skilled workers from Mexico would have been in the economic interest of the U.S. as well as Mexico. These conditions no longer exist. A large increase in the immigration of low-skilled workers unquestionably depresses the wages and employment opportunities of low-skilled American workers. Lower earnings and greater unemployment for low-skilled American workers means that income transfers for the current working-poor recipients will increase and more families will be eligible for such transfers. These developments have strong implications for the likely success of your reform program. In addition these developments would heighten social tensions among low-income groups (particularly blacks and Hispanics) and between the low-income and middle-income populations.

(continued)

The policy response to increased low-skilled immigration may be to adjust income transfers so that the losses to low-skilled American workers are mitigated. Since legal immigrants cannot generally be barred from participating in the income transfer system, the immigrants themselves may also become substantial recipients of income transfers. Then, the income of the American population as a whole, net of the tax-transfer system will be lower than if there had been no immigration.

It would be a disaster for the economy if your programs for the reform of the income transfer system and limiting the growth of the budget were to be sabotaged because of underestimating the adverse impacts of the immigration of low-skilled workers. Indeed, U.S. policy makers have given insufficient attention to the impact of alternative criteria for rationing immigration visas. Current policy, and the recommendations of the Select Commission on Immigration and Refugee Policy, tend to favor the immigration of low-skilled workers. An alternative policy is to focus on issuing immigration visas to those applicants likely to be the most productive in the U.S. A skill-based rationing system would have the advantage of augmenting the labor force with workers whose tax contributions far exceed their use of government transfers and services, and whose presence in the labor market raises the earnings and employment of low-skilled American workers, thereby reducing the magnitude of income transfers. High-skilled immigration would be consistent with your Administration's overall supply-side program to increase the productive capacity of the economy.

My thoughts on immigration policy are being developed in greater detail in a paper "Criteria for the Reform of Immigration Policy" I am preparing for American Enterprise Institute's Contemporary Economic Problems series. I shall send you a copy shortly when it is completed.

Sincerely,

Barry R. Chiswick
Research Professor

(Former Senior Staff Economist,
Council of Economic Advisers,
July 1973- January 1977)

BRC/mb

Summary

Guidelines for the Reform of Immigration Policy

Barry R. Chiswick

This study is concerned with the optimal immigration criteria for the United States. As the focus is on the economic consequences of immigration it is concerned with the labor market productivity of the immigrants and their impacts on the native population.

The study begins with a discussion of current immigration law, the enforcement of this law, and the magnitude of immigration under the various categories. It shows that the law places a very heavy emphasis on kinship with a U.S. citizen or resident alien as the criteria for rationing immigration visas. Little weight is given to the skills or likely labor market adjustment of visa applicants. The small occupational preference categories are burdened with an arbitrary and cumbersome administrative procedure. The enforcement of immigration law appears to be minimal, and has declined in both real resources and effectiveness in recent years. The result is a relatively large proportion of low-skilled immigrants.

Immigrants are shown to vary in their productivity as measured by their earnings and employment. The productivity of immigrants is higher for those with more schooling, more skills acquired on the job or in vocational training programs, and the greater the transferability of these skills. Productivity is greater for economic migrants than for either refugees or tied (kinship) movers. Immigrants from less developed countries, particularly Mexico, earn less than other immigrants, other things the same.

The impact of a cohort of immigrants depends on its characteristics. A cohort of low-skilled (high-skilled) immigrants depresses the earnings of low-skilled (high-skilled) American workers but raises the earnings of high-skilled (low-skilled) workers and the owners of capital. In either instance, in the absence of income transfers natives as a whole are better off. Low-skilled immigration, however, widens income inequality and if income transfers are used to mitigate the losses of low-skilled natives and immigrants participate in the transfer system the native population as a whole can be made worse-off. Under high-skilled immigration, inequality among natives declines, income transfers decrease, and all native groups can, in principle, be made better off as a consequence of the immigration. The commonly held view that immigration causes unemployment is shown to be essentially groundless.

A skill-based rationing system for visas is proposed as an alternative to current policy. Under this proposal the applicant's level of skill would be the primary determinant as to whether a visa is issued. Except for the immediate relatives of U.S. citizens, kinship would play a minor role. A point system would be used to combine the multi-dimensional aspects of skill. This policy, combined with more stringent enforcement of immigration law, would raise the skill level and hence also the favorable economic impact of immigrants. In contrast, the recommendations of the Select Commission on Immigration and Refugee Policy are shown to favor low-skilled immigrants and would shift much of the economic burden of enforcing immigration law from the appropriate government authorities to employers who would have to screen all workers for their legal status.

Guidelines for the Reform of Immigration Policy

Barry R. Chiswick

Introduction

Immigration to the United States, and hence U.S. immigration policy, can have a substantial long-term impact on the economic well-being of the country as a whole and on the various demographic groups that comprise the population. It is, however, an issue on which there is much public confusion primarily because it is thought of in an emotional rather than a rational, systematic manner.

The purpose of this paper is to provide a framework or a set of guidelines for the analysis of immigration policy, that is, policy regarding the granting of permanent resident alien status. The framework will focus on both the overall economic impacts of immigration and the distribution of these impacts. With this approach the economic benefits and costs of alternative immigration policies can be evaluated.

Immigration policy includes the laws and administrative regulations regarding who may enter the United States, for what period of time, and for what purposes (work, study, travel, etc.). Equally important is the enforcement of immigration laws and regulations. A policy of stringent criteria for entry combined with lax enforcement would essentially be a policy of relatively easy entry for persons willing to violate the law. The focus of this study is on permanent resident aliens or immigrants, and not on foreign students, visitors or temporary workers.

As with most of our other social regulations, the original intent of immigration restrictions was to protect the health and safety of the resident population. The earliest restrictions (19th century) were intended to bar persons with contagious diseases, criminals and the indigent, among other "social misfits". Quantitative restrictions were then introduced, first against East-Asians, and then against Eastern and Southern Europeans, in part because of racial and religious prejudice and xenophobia, and in part to protect the wages of low-skilled native workers from the competition of unskilled immigrants. Most of the racisim and ethnocentrism implicit in U.S. immigration policy was eliminated by the 1965 Amendments to the Immigration and Nationality Act. These Amendments, along with the 1977 Amendments regarding the Western Hemisphere, substituted kinship (with a U.S. citizen or resident alien) for country of origin as the primary criterion for rationing immigration visas.

Because of its direct and indirect impacts on the labor market, and hence on the entire economy, and because a much larger number of persons would like to immigrate than the U.S. is willing to accept, immigration restrictions have widespread implications. After a decade of experience with the new policy there is substantial dissatisfaction. A policy based on kinship is superficially appealing on humanitarian grounds and in a period of seemingly unlimited prosperity (1965) adopting this policy may have been essential for eliminating the pernicious national-origins quota system. In the current era of slower increases in productivity it is even more appropriate to ask who bears the burden of the immigration policy, and whether alternative equally non-racist policies can have a more favorable economic impact.

In a policy-related discussion of the economic consequences of immigration, or of any issue, it is important to distinguish between those concerns that are legitimate and those that are based on a faulty understanding of the issues. A recognition of legitimate concerns can result in the identification and development of policies to ameliorate these concerns. The identification of false issues that impede progress toward the development of sound policy is equally important.

The labor market adjustment of immigrants in the U.S. and their impacts on the income and employment of the native population are issues of particular importance. The labor market impacts of immigrants are not unidimensional, in part because immigrants are not homogeneous with respect to skills and other characteristics related to the labor market. Even if immigrants were homogeneous, their impacts on the native population would not be uniform because of the heterogeneity of the native population. Insights regarding the productivity of immigrants add a whole new dimension to the policy debate. They suggest that it is not just the number of immigrants that is relevant, but also the characteristics of these immigrants. The characteristics of an annual stream of immigrants are not exogenous, as they can be largely determined by immigration policy.

This study begins with a review of current immigration policy. Attention is given to the extent to which this policy selects immigrants on the basis of their productivity. The economic adjustment of immigrants in the U.S. is then considered with an emphasis on the determinants of differences in economic success, as measured by immigrant's earnings and employment. The economic effects of immigration are analyzed in terms of the impact on the unemployment and income of the native population. The effects on the native population of immigrant cohorts that differ in productivity characteristics are considered.

Two alternatives to current policy are presented and discussed. One is a skill-based rationing system in which productivity characteristics are the primary criteria for rationing visas. The other is the set of recommendations from the Select Commission on Immigration and Refugee Policy which would increase the role of kinship in the issuance of immigration visas and grant amnesty to illegal aliens. The study concludes that a skill-based rationing system better satisfies the objectives of promoting economic growth and reducing the relative size of income transfers in the economy.

Current Immigration: Policy and Flows

Current immigration law has its basis in the 1965 Amendments to the 1952 Immigration and Nationality Act.[1] The 1965 Amendments abolished the pernicious national origins quota system instituted in the 1920's, as well as the emphasis (introduced in 1952) on skill or productivity for rationing visas among applicants from within a country. In their place, the Amendments created a system of "preferences" with a very heavy emphasis on kinship with a U.S. citizen or resident alien as the rationing mechanism. Skill and refugee status were given relatively minor roles.

The basic features of current immigration law, including the changes introduced by the Refugee Act of 1980, are outlined in Table 1.[2] The number of immigrants "admitted" to the U.S. under various categories is shown for two

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[1] The 1952 Act was primarily a recodification of existing law.

[2] For a brief review of the history of U.S. immigration law and trends see Barry R. Chiswick, "Immigrants and Immigration Policy," in William Fellner, ed. Contemporary Economic Problems, 1978, (AEI, 1978). The major legislative development since 1978 is the Refugee Act of 1980 which is described below.

Table 1

Summary of the Immigration Preference System Under the 1965 Amendments to the Immigration and Nationality Act, and Subsequent Amendments

Immigrants Not Subject to Numerical Limitation

Spouse and minor children of U.S. citizens and the parents of U.S. citizens over age 21.

Immigrants Subject to Numerical Limitation

Quotas:

Eastern Hemisphere(a)	170,000 per year
Western Hemisphere(a)	120,000 per year
Country ceiling (b)	20,000 per year

Preference System (c)

Preference	Characteristic	Maximum Proportion of Visas
First	Unmarried Adult children of U.S. citizens	20 percent
Second(d)	Spouse and unmarried children of permanent resident aliens	20 percent plus any not required for first preference (d)
Third	Professionals, scientists, and artists of exceptionable ability	10 percent
Fourth	Married children of U.S. citizens	10 percent plus any not required for first three preferences
Fifth	Siblings of U.S. citizens	24 percent plus any not required for first four preferences

Table 1 Continued

Preference	Characteristic	Maximum Proportion of Visas
Sixth	Workers in occupations for which labor is scarce in the U.S.	10 percent
Seventh (e)	Refugees (e)	6 percent (e)
Non-Preference	Any applicant not entitled to a preference	Numbers not required for preference applicants
-----	Spouse and minor children of any preference applicant can be classified with the same preference if a visa is not otherwise available	Charged to appropriate preference

(a) Converted to a combined world ceiling of 290,000 visas by the 1978 Amendments and reduced to 270,000 visas per year when the Refugee Act of 1980 removed refugees from the preference system.

(b) Country ceiling applicable to the Eastern Hemisphere under the 1965 Amendments and the Western Hemisphere since the 1977 Amendments.

(c) Preference system applicable to the Eastern Hemisphere under the 1965 Amendments and the Western Hemisphere under the 1977 Amendments . Prior to 1977 Western Hemisphere visas issued on a first-come, first-served basis.

(d) Increased to 26 percent of the 270,000 visas with the passage of the Refugee Act of 1980.

(e) The Refugee Act of 1980 established a quota of 50,000 visas for refugees outside of the preference system, and gave the President authority to admit additional refugees. The Act changed the definition of refugee to a person with a well founded fear of religious, political or racial persecution regardless of country of origin, whereas refugee status was previously applicable only to persons fleeing a communist country or the general area of the Middle East.

Source: Immigration and Naturalization Service.

years in Table 2.[1] The world-wide, country and preference category quotas indicated in Table 1 refer to ceilings on the number of visas issued in a year. The data on immigration refer to the number of persons entering the U.S. with an immigrant visa, or receiving a change in status to permanent resident alien. Immigrant visas need not be used in the year they are issued, some are not used for several years, and others may never be used.

A person can receive immigrant status (permanent resident alien status) under one of four general categories -- an immediate relative of a U.S. citizen, other kinship criteria, occupation or skill, and refugee status.[2] In addition, refugees can be given asylum or parole status by the Attorney General, which enables them to enter and work in the U.S. indefinitely, although most eventually obtain an adjustment of status and become permanent resident aliens.[3] Obtaining permanent resident alien status is, of course, the first step toward acquiring U.S. citizenship.

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[1] Of the 601,000 immigrants "admitted" in 1978, 230,000 were already in the U.S. and received an "adjustment of status." Of these 122,000 were Cuban and Indochinese refugees (28,000 and 94,000 respectively) whose adjustment of status outside of the numerical limitations was made possible by legislation in 1976 and 1977. Of the 101,000 adjustments made under section 245 of the Immigration and Nationality Act the status at entry of nearly 60 percent was listed in the INS statistical yearbook as "temporary visitors for pleasure," another 18 percent were students. An immigrant visa is often easier to obtain from inside the U.S. than from outside. (Source of data 1978 Statistical Yearbook, Immigration and Naturalization Service, Washington: U.S. Department of Justice, 1980 Tables 4, 6B and 6C).

[2] "Private bills" are enacted in a small number of cases (65 in the 95th Session of Congress) to grant immigrant status to individuals who would not otherwise qualify. The value of an immigrant visa to some was demonstrated by the successful use by the FBI of bogus bribes to Congressmen for introducing private immigration bills (ABSCAM cases).

[3] In 1978, for example, 122,000 Cuban and Indochinese refugees were made permanent resident aliens outside the preference and quota system under legislation enacted in 1976 and 1977.

Table 2

Immigrants Admitted to the U.S.,
1975 and 1978
(fiscal years)

	1975	1978
Total Immigrants	386,194	601,442
Immigrants Exempt from Numerical Limitation	104,633	260,338
Immediate Relatives	91,504	125,819
Immigrants Act of October 12, 1976 and October 30, 1977 (a)	---	122,442
Other	13,129	12,078
Immigrants Subject to Limitation (b)		
Eastern Hemisphere	160,460	165,743
Relative Preferences	95,945	123,501
First Preference	871	1,120
Second Preference	43,077	44,116
Fourth Preference	3,623	5,954
Fifth Preference	48,374	72,311
Occupational Preferences	29,334	26,295
Third Preference(professionals)	8,363	4,822
Sixth Preference(other workers)	6,724	7,705
Their spouses and children	14,247	13,768
Refugees-Seventh Preference	9,129	9,724
Non-Preference, private bills and others	26,052	6,223
Western Hemisphere	121,101	175,796
Relative Preferences	---	66,796
First Preference	---	2,572
Second Preference	---	33,631
Fourth Preference	---	5,450
Fifth Preference	---	25,143
Occupational Preferences	---	4,582
Third Preference (professionals)	---	465
Sixth Preference (other workers)	---	1,183
Their spouses and children	---	2,934
Refugees-Seventh Preference	---	585
Non Preference, private bills and others	---	47,955
Natives of Western Hemisphere And Immigrants Act of 1966 (c)	121,101	55,411

(a) These acts provide for adjusting to resident alien status of Cuban and Indochinese refugees in the U.S.

(b) Except for the occupational preferences, spouses and minor children are included in the totals for the preference category of the immigrants.

(c) Refers to immigrants who obtained visas prior to the extension of the preference system to the Western Hemisphere.

Source: _1978 Statistical Yearbook, Immigration and Naturalization Service_, U.S. Department of Justice, 1980, Table 4.

Kinship Criteria

The immediate relatives of U.S. citizens, that is, the spouse, unmarried minor children, and parents of adult citizens, can enter the U.S. without numerical limitation. Although the number of persons entering the U.S. in this manner had fluctuated around 100,000 per year since 1965, recently it has increased to about 125,000 per year, primarily due to increased immigration of spouses of citizens, and secondarily due to the increased immigration of parents.

Among the immigration visas subject to numerical limitation, at least 74 percent (prior to the 1980 Refugee Act) were reserved for other relatives of U.S. citizens and resident aliens (Table 1).[1] In 1978, of the 165,743 immigrants from the Eastern Hemisphere subject to numerical limitation, 75 percent entered under the kinship preferences (Table 2). Little use was made of the first preference (unmarried adult children of U.S. citizens, and their children) or the fourth preference (married children of U.S. citizens and their spouses and children), but to the extent these preferences were undersubscribed additional persons entered under the second preference (spouses and unmarried children of resident aliens and their children) and the fifth preference (siblings of U.S. citizens and their spouses and children). During the 1960's and early 1970's the kinship preferences were not fully subscribed, and "nonpreference" visa applicants could immigrate. The rapid increase in the use of the fifth preference, however, has eliminated this alternative.[2]

For the Western Hemisphere, until 1977 visas were issued on a first-come, first-served basis, and in 1978 over 55,000 immigrants entered with these visas. Of the more than 71,000 immigrants who entered under the preference system in that year 94 percent immigrated under the kinship preferences. Of these, immigration under the first and fourth preferences was small, while immigration under the second and fifth preferences was large.

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[1] The 6 percent quota for refugees was given to the second preference (a kinship preference) when the Refugee Act of 1980 removed refugees from the preference system.

[2] "Non-preference" applicants have to obtain a labor certificate (i.e., demonstrate they have a "needed" skill and a job waiting for them), invest money in a business in the U.S. or satisfy some other criteria to demonstrate their economic value to the U.S.

Occupational Criteria

The 1965 Amendments reserved up to 20 percent of the visas in the preference system for rationing on the basis of occupation. The third preference provides for the immigration of professionals and persons of exceptional ability in the arts and sciences. The sixth preference refers to skilled workers whose services are needed in occupations for which U.S. workers are in short supply. For both occupational preferences a cumbersome application procedure administered by the Department of Labor's Office of Labor Certification is required of both the immigrant and a U.S. employer.[1] In general, the U.S. employer must demonstrate that appropriate workers are not available in the U.S. at the prevailing wage for that job. This requirement is meaningless since for a sufficiently high wage, a new prevailing wage, fewer workers would be demanded and more workers already in the U.S. would be available to the occupation or employer.

For some jobs the Office of Labor Certification had "predetermined" that a shortage exists. These jobs, referred to as Schedule A, currently include physicians in areas which the Department of Health and Human Services determines there is a shortage, nurses who are already registered in the state of intended residence or who have passed the Commission on Graduates of Foreign Nursing Schools Examination, and physical therapists qualified to take the state licensing exam; persons in the sciences and (non-performing) arts with exceptional ability, including college and university teachers of exceptional

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[1] For the current regulations see "Labor Certification Process for the Permanent Employment of Aliens in the United States: Final Rule," Federal Register, Part IX, Department of Labor, Employment and Training Administration, Vol. 45, No. 246, Friday December 19, 1980, pp. 83,926-83,949.

Table 3

Benficiaries of Occupational Preferences, by Immigrant Status and Occupation, fiscal year 1978

	Third Preference		Sixth Preference		Total	
Occupation	Admissions	Adjustments of Status	Admissions	Adjustments of Status		Percent (a)
Professional, Technical and Kindred	2,091	3,181	736	2,968	8,976	18.4
Engineers	356	454	197	646	1,653	24.7
Nurses	731	238	45	479	1,493	30.2
Physicians	146	743	23	159	1,071	24.1
Research Workers (not specified)	21	369	8	179	577	43.4
Scientists (life and physical)	108	237	45	144	534	29.5
Teachers (college and University)	47	195	47	180	469	25.3
Writers, artists and entertainers	43	99	112	211	465	9.4
Managers (except farm)	10	3	466	1,285	1,764	8.4
Sales, Clerical and Kindred	2	0	145	299	446	1.3
Craftmen and Kindred	0	0	519	399	918	3.3
Operatives (including transport)	0	0	119	139	258	0.5
Laborers (except farm)	0	0	51	61	112	0.5
Farm (laborers, foreman and managers)	0	0	27	90	117	1.0
Service (except private household)	0	0	504	501	1,005	4.0
Cooks	0	0	399	364	763	14.3
Private Household Workers	0	0	263	316	579	5.5
Total	2,103	3,184	2,830	6,058	14,175	5.7

(a) Percent of immigrants reporting that occupation.

Note: All detailed occupations with 450 or more beneficiaries of an occupational preference are listed separately.

Source: 1978 Statistical Yearbook, Immigration and Naturalization Service, U.S. Department of Justice, 1980,Table 8A.

ability; religious practitioners; and managers in multinational corporations.[1] The Labor Certification Office has "determined" that other occupations are not to be used as a basis for labor certification. These Schedule B occupations include many which provide employment for immigrants who enter the U.S. under other criteria, including personal service attendants, cleaners (hotel, motel, household), kitchen workers, laborers, nurses aides, taxicab drivers and gardeners, although labor certifications are given on occassion to applicants in these occupations.

Although up to 20 percent of the visas subject to the preference system are reserved for occupational preferences, its impact on the skill distribution of immigrants is smaller than might appear. First, the spouse and minor unmarried children of workers receiving an occupational preference visa are generally charged to that preference. Of the 26,295 persons from the Eastern Hemisphere who entered under an occupational preference in 1978, 52 percent were spouses and children, many of whom subsequently enter the labor force.[2] Of the 4,582 persons from the Western Hemisphere, 64 percent were spouses and children. Second, when a worker obtains a visa through a labor certification there is no legal obligation to work for the employer or in the occupation. The extent of this "leakage" is not known. Third, there is a tendency for the occupational preferences to be used by persons already in the U.S. with non-immigrant visas who seek an adjustment of their status. Of the 14,175 occupational preference visas in 1978, 65 percent received an adjustment of status. That is, they were in the U.S. under a student, tourist or other visa, or in the U.S. illegally, but were able to obtain a labor certification. The cumbersome certification process, which generally requires considerable employer cooperation, gives a decided advantage to persons who are already working in the U.S.

In spite of these limitations on the size and scope of the number of immigrants who may enter under the occupational preferences, they are an important source of professional workers in the immigration stream. Among immigrants in 1978 who reported an occupation on their visa application nearly one fifth of the professionals were beneficiaries of an occupational preference (Table 3). More than one-quarter of the engineers, nurses, physicians, research scientists, and college and university teachers who immigrated did so under an occupational preference. As would be expected only a very small proportion of immigrants in other occupations received an occupational preference, with the notable exception of cooks, including chefs (14 percent).

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[1] Physicians and nurses were added to Schedule A in 1980, after having been removed from the list in 1976 . Dieticians were removed from the list in 1980 apparently because the national association asserted there was no shortage. There is apparently no research basis for the Office of Labor Certification's determinations.

[2] The data in this paragraph are from 1978 Statistical Yearbook, Tables 7A and 8A.

In summary, there are many features of the current occupational preferences that have the effect of substantially reducing the program's ability to facilitate the immigration of high productivity workers. In spite of these features, the preferences are an important source of high-level manpower. That there are queues for obtaining an occupational preference visa suggests that even more high productivity immigrants would be forthcoming if the preference quotas were increased, country ceilings on these categories were removed, and the requirements of prearranged employment and the burdensome application procedure were eased.

Refugees

The 1965 Amendments and the Refugee Act of 1980 have attempted to regularize the flow of refugees. Events have proved this is difficult. The 1965 Amendments allocated 6 percent of the visas within the preference system to refugees and retained the requirement that a refugee had to be fleeing a Communist country or from the general area of the Middle East. The 1980 Refugee Act increased the annual quota of refugees from 17,400 to 50,000 visas.[1] In addition the Act stipulated that a refugee was any person subject to or with a well-founded fear of political, religious, ethnic or racial persecution (whether from a Communist country or otherwise), and was already in a country of first asylum.

The 1980 Refugee Act was based on the desire to be even-handed in the treatment of persons fleeing Communist and non-Communist government persecution, and on the experiences of the Vietnamese boat people. It was immediately found deficient. The definition of a refugee is not so clear, and the first asylum provision penalizes refugees from countries in close proximinity of the U.S.

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[1] The President was also given the authority to admit additional refugees if the situation warranted.

The Haitians seeking asylum in Florida claimed they were refugees from poverty, and having fled could not return without being persecuted by an authoritarian regime. The Cuban "boat people", the more than 120,000 persons who entered the U.S. in 1980, were technically not eligible for admission under the Refugee Act as the U.S. was the country of first asylum. Whereas the Cubans were admitted under the Attorney General's ad hoc authority to parole persons into the U.S., the status of the Haitians is still ambiguous.

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Illegal Immigration and Enforcement Resources

One dimension of current immigration policy is the extent to which the law is enforced. The enforcement of immigration law is minimal, in terms of both the magnitude of the resources and possibly also the deterrent effect of the deployment of these resources. The limited, but not negligible, enforcement of immigration law tends to attract low-skilled illegal aliens.

The number of violations of immigration law is, of course, unknown.[1] The stock of illegal immigrants in the U.S. has been variously estimated at two million to 12 million persons, but a recent U.S. Bureau of the Census review of these estimates suggests a range of 3.5 million to 6 million persons of whom about half are Mexican nationals.[2] Data exist, however, on the number of apprehensions of illegal aliens. The number of deportable aliens located increased from 70,000 in 1960 to over one-million per year since 1977 (Table 4).[3] Of the more than 1 million deportable aliens located in fiscal year 1978, nearly 950,000 were Mexican nationals who entered without inspection (Table 5).

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[1] A person may violate immigration law and become an illegal alien by violating the condition of a legally obtained visa (such as unauthorized working with a student or visitor visa, or remaining in the U.S. beyond the date specified in the visa), entering the U.S. with a fraudulant visa, or by surreptitious entry.

[2] See Jacob S. Siegel, Jeffrey S. Passel and J. Gregory Robinson, "Preliminary Review of Existing Studies of the Number of Illegal Residents in the United States," U.S. Bureau of the Census, mimeo, January 1980.

[3] The decline in apprehensions in fiscal year 1980 (Table 4) has been attributed to the 3 month moritorium on interior enforcement which was intended to increase compliance with the 1980 Census and to the diversion of INS resources for the registration of Iranian students and the Cuban boat-people. There are no data on the extent to which the same individual is apprehended more than once in a year.

Table 4

Immigration and Naturalization Service Personnel, Immigrants, Non-Immigrants and Deportable Aliens Located, 1960-1980 (fiscal years)

	INS Personnel			Work-Load		
	Permanent Positions	Average Paid Employment(a)	Total(a)(b) Compensable Work Years	Immigrants	Non-Immigrants Admitted	Deportable Aliens Located
1960	6,895	6,522	—	265,398	1,140,736	70,684
1965	7,043	6,747	—	296,697	1,220,315	110,371
1970	6,920	6,672	—	373,326	4,431,880	345,353
1975	8,020	7,992	—	386,194	7,083,937	766,600
1976	8,832	—	9,227	398,615	7,654,491	875,915
1977	9,473	—	9,705	462,315	8,036,916	1,042,215
1978	10,071	—	9,804	601,442	9,343,710	1,057,977
1979	10,997	—	11,655	460,348	—	1,076,418
1980	10,943	—	9,885	—	—	910,361

(a) The data include the full-time equivalent of non-permanent positions.

(b) Includes the full-time equivalent of overtime and holiday hours worked. This accounted for the equivalent of 1,484 compensable work years in 1979 and 1,771 compensable work years in 1980.

Note: Since 1977 fiscal year is from October 1 to September 30, prior to 1977 it was from July 1 to June 30.

Source: Columns (1) to (3): The Budget of the United States Government: Appendix various years; columns (4) to (6): 1978 Statistical Yearbook, Immigration and Naturalization Service, U.S. Department of Justice, 1980, Table 23.

Table 5

Deportable Aliens Located By Status at Entry and Nationality, fiscal year 1978

Nationality	Status at Entry					
	Entry Without Inspection	Visitor	Student	Crewman	Other	Total
Europe	295	5,521	585	6,317	1,263	13,981
Asia	138	5,008	2,969	4,940	1,720	14,775
North America	968,219	33,498	944	828	9,234	1,012,719
Mexico	948,891	21,484	349	40	5,903	976,667
South America	2,708	5,557	655	919	962	10,801
Africa	28	998	1,135	507	242	2,910
Other	68	1,699	525	281	218	2,791
Total	971,456	52,281	6,813	13,788	13,639	1,057,977

Source: 1978 Statistical Yearbook, Immigration and Naturalization Service, U.S. Department of Justice, 1980, Table 30.

Most 81,000 were persons of other nationalities.

The increase in apprehensions is believed to reflect a large increase in illegal immigration. The end of the Bracero (temporary farm worker) program in 1964, the introduction of numerical limits on Western Hemisphere immigration in 1965 and subsequent tightening of restrictions on Western Hemisphere immigration, the prospect of amnesty as proposed by the Carter Adminstration in early 1977, as well as improved transportation and information networks, and increased competition for jobs among low-skilled workers in the major sending countries have all served to increase illegal immigration.

The data on apprehensions reflect, in part, administrative decisions on the allocation of enforcement resources. More apprehensions per dollar of enforcement expenditure occur if there is a relative concentration along the Mexican border. This may not, however, be the maximum deterrent for a given enforcement budget. Apprehensions along the border may have a minimal deterrent effect if, as is believed to be the situtaion, most illegal aliens who are apprehended and deported while entering without inspection simply try again a few nights later. An apprehension and deportation may have a greater long-term deterrent effect if it occurs after an illegal alien has penetrate the border and incurred costs in locating a job and residence. Even though the cost per apprehension away from the border is higher, it is not obvious that is is less cost effective in deterring illegal immigration.[1]

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[1] David North estimates that the 1979 cost per apprehension by the Border Patrol (for border enforcement, interior enforcement and anti-smuggling activities) was $108 compared with $156 for the investigations unit (interior enforcement). The cost per apprehension for just border control activities is even less than for overall Border Patrol activities. See David North, "Enforcing the Immigration Law: A Review of the Options," New Transcentury Foundation, September 1980, mimeo, pp. 17. North's study includes several interesting ideas for increasing the efficiency of the enforcement of immigration law at the border and in the interior.

That there is such a large and increasing number of apprehensions along the Mexican border suggests that the border is porous and that the cost of being apprehended is low to the illegal alien. If the probability of apprehension were very high and the cost of apprehension were high, few persons would attempt illegal entry and the number of apprehensions would be small.

Little is known about the characteristics of illegal aliens. There are reasons to believe, however, that they are not a random sample of persons desirous of but unable to obtain a legal immigrant visa, but rather that they are disproportionately low-skilled workers. There is some probability, which is greater than zero, of being apprehended at the border or in the interior. The probability of detection in the interior is greater for those who come into contact with the authorities--the police, an occupational licensing board, the personnel department of a government agency or a large firm. Persons with high levels of skill, particularly professionals who require a certification of one sort or another, may be particularly likely to be detected. In addition, the cost of deportation is greater for persons with higher levels of skill. Unskilled workers (and workers with skills that are readily transferable internationally) do not lose the value of U.S. investments in training if deportation occurs. Country-specific investment in training tends to rise with the skill level, and a deported skilled illegal alien finds that investments in U.S.-specific training are not relevant when he returns to the home country and that some of the skills specific to the country of origin acquired prior to the illegal migration have subsequently depreciated.

The resources devoted to the enforcement of immigration law are relatively small and it would appear that they have not kept pace with the workload.[1] The number of permanent postions in the Immigration and Naturalization Service increased by nearly 60 percent from 1960 to 1979 (See Table 4).[1] During the same period the annual number of immigrants more than doubled, non-immigrant admissions of aliens increased eight fold, and the number of apprehensions of illegal aliens increased 14 fold. Not all of the increase in permanent positions reflects more resources devoted to direct enforcement activities, particularly in recent years. For example, from fiscal year 1977 to 1979 the INS opperating budget increased 11 percent in real dollars and the real resources devoted to service to the public, support opperations, and program direction increased 47 percent, but border enforcement resources increased 1 percent, detention and deportation resources decreased by 4 percent, and interior enforcement resources decreased by 15 percent.[2]

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[1] In addition to screening persons entering through legal gateways (a function shared with the Customs Service) and other enforcement of immigration law through patrols along the border and interior enforcement, the INS administers the annual registration of aliens and administers naturalization applications and proceedings. Visa applications are administered by the State Department's Visa Service and labor certificaitons are issued by the Labor Department's Office of Labor Certification. David North estimated that in fiscal year 1980 there were 11,869 "immigration law enforcement positions". Of these, 8,433 were in the INS (including 2,694 in the Border Partol and 1,019 in interior enforcement), 2,287 in the Customs Service, 907 in the State Department and 242 in the Labor Department's Employment Standards Administration (enforcement of minimum wage and farm worker regulations). North, "Enforcing the Immigration Law," page 13.

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[1] The INS publishes detailed tables on immigrants, non-immigrants, apprehensions, naturalizations, etc. in its annual reports and in its 105 page 1978 Statistical Yearbook. However, data on the INS budget, number of personnel or number of personnel in enforcement units are not to be found in the Annual Reports, the 1978 Statistical Yearbook or the INS Reporter, a house organ. Apparently the only published materials are in the Budget of the United States: Appendix.

[2] The percent increase in nominal expenditures was adjusted by the deflator for Federal non-defense purchases of goods and services which increased 14 percent during the period.

This reallocation of resources within the Immigration and Naturalization Service away from enforcement activities, particularly interior enforcement, appears to be reflecting a decision by the Carter Administration to grant *de facto* amnesty for illegal aliens already in the U.S., as Congress showed no interest in the Administration's 1977 legislative proposal for amnesty.[1]

Summary

Taken as a whole U.S. immigration policy is best characterized as focusing on kinship as the primary criteria for rationing immigration visas. Few visas are issued on the basis of skill or likely productivity in the U.S., and for these few a cumbersome application procedure is required that gives decided advantages to persons already in the U.S. in some other status. Policies toward illegal immigration are characterized by minimal effective enforcement, particularly in recent years. There has been a reduction in interior enforcement and there are no penalties other than deportation against apprehended illegal aliens. The resources devoted to border control, particularly along the Mexican border, may be operating a revolving door rather than having a substantial deterrent effect. As a system, these policies result in the immigration of a larger number and proportion of lower-skilled workers than the alternative to be discussed below, a skill-based rationing system.

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[1] The Carter Administration's proposed 1982 budget included a further decline in real resources for the INS. "Mr. Crosland (Acting Commissioner) said that the new budget would maintain the strength of the border patrol, but cut the number of investigators who look for illegal aliens inside the country and trim the number of inspectors who screen travelers at ports of entry." "Immigration Agency's Staff to be Reduced in Fiscal 1982 Budget" *Wall Street Journal*, January 9, 1981, p. 8.

Heterogeneity among Immigrants

Much of the popular discussion tends to view immigrants either as unskilled and poorly motivated workers, or as highly successful and aggressive achievers. These characterizations focus on the extremes. The average immigrant is at neither pole, but is apparently closer to the latter than the former. More striking, however, is the heterogeneity among immigrants. Immigrants differ almost as much as natives in their earnings, occupational distribution, schooling and on-the-job training. And they vary widely by country of origin. There is, however, a tendency for most to be young adults (in their 20's) when they immigrate, but this is more so for economic migrants than for refugees.

The productivity of immigrants, as measured by their labor market earnings, varies systematically with several readily measurable variables.[1] Earnings are higher for immigrants with more schooling, and it does not appear to matter whether the schooling was acquired in the United States or in the country of origin. The effect of schooling on earnings is greater for immigrants with highly transferable skills, such as economic immigrants from English-speaking countries, and is least for refugees, such as the Cubans. Earnings are also positively related to the number of years of labor market experience in the country of origin prior to immigration. Again, this effect is greatest for economic migrants from English-speaking countries and least for refugees.

Most striking is the generally strong positive effect of duration of residence in the U.S. on the earnings of immigrants. The effect is curvilinear, as earnings generally rise very sharply during the first few years and continue to rise but at a decreasing rate with the duration of residence.

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[1] Much of the discussion on earnings in this section is based on Barry R. Chiswick, _An Analysis of the Economic Progress and Impact of Immigrants_, Report Submitted to the Employment and Training Administration, U.S. Department of Labor, June 1980, NTIS No. PB80-200454. The Data are from the 1970 Census of Population.

Although on arrival male immigrants have lower earnings than their native-born counterparts, other things the same economic migrants reach earnings parity after 11 to 15 years, and thereafter the immigrants have higher earnings. Earnings on arrival are lowest for refugees, other things the same, and although the gap narrows with a longer residence, it is not closed. The magnitude of the rise in earnings with duration of residence is, of course, greater for those who must undergo the greatest economic adjustment on arrival (refugees) and is weakest for those with the smallest economic adjustment (English-speaking economic migrants).

Earnings are also related to the cause of the migration. Earnings are greater for economic migrants than for refugees, presumably because non-economic factors influenced the migration decision of the latter and they have fewer transferable skills. The data also suggest that those who base their decision to migrate primarily on the migration decision of a family member (referred to as "tied movers") have lower earnings than the primary economic migrant. Using data from the 1970 Census of Population, Chiswick found that, other things the same, women who married prior to immigration had consistently lower hourly earnings than those who married after immigration.[1] Using data on internal migrants, Mincer found that tied movers had lower earnings and higher unemployment rates in the destination than similarly situated internal migrants who were not tied movers.[1] Related to this, it has to this, it has been found that, other things the same, after seven years in the U.S. persons admitted under the kinship immigration criteria have lower earnings than occupational preference and non-preference immigrants.[2] The superior performance of primary economic migrants in comparison with those whose migration is influenced by kinship ties, even when other measured variables are the same, is presumably related to the transferability of skill, ability, motivation for personal labor market advancement, and continuity of attachment to the labor market.

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[1] Chiswick, An Analysis of the Economic Progress (1980) Chapter 9.

There tends to be a substantial difference in earnings between immigrants from advanced industrialized societies and those from less developed countries. Some of this difference is attributable to the smaller number of years of formal schooling of the latter. Even so, however, some substantial and significant differences remain. For example, other things the same, including area of residence in the U.S. and marital status, immigrants from Mexico earn about 20 percent less than European immigrants. Perhaps this arises because the earnings gain from migration from Mexico is so substantial that it is worthwhile even if earnings are lower than average in the U.S., while immigration from the higher-income countries is profitable only if higher than average earnings can be obtained in the U.S. For reasons that are as yet unclear, other variables the same, the earnings differential of about 20 percent between Mexican-Americans and Anglos also exists among second-generation Americans (native-born but with at least one foreign-born parent) and higher-generation Americans (both parents born in the U.S.).

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[1] Jacob Mincer, "Family Migration Decisions" Journal of Political Economy, October 1978.

[2] Although David North reports that in his relatively small sample (211 observations) the coefficient of the kinship variable is insignificant, the t-ratio is 1.64 which is statistically significant at a 5 percent level, one tailed test. See David North," Seven Years Later: The Experiences of the 1970 Cohort of Immigrants in the U.S. Labor Market," Linton and Co., Inc., Washington, D.C. mimeo June 15, 1978, pp. 102-104 and Appendix B page B-9.

In summary, the productivity of immigrants in U.S. labor markets tends to be greater for those with higher levels of schooling, for those with more skills acquired on-the-job or in vocational training programs, the greater the transferability of these skills, and for economic migrants rather than refugees or kinship migrants. Immigrants from less developed countries, particularly from Mexico, tend to earn less than others even after variables that determine earnings are held constant.

Economic Impact

The formation of immigration policy, as with much other public policy, would be simpler if the native population were homogenous. Then the average effect of immigrants on the native population would be the effect on each and every native person. The heterogeneity among natives in the ownership of both human and non-human assets means that in policy debates the distribution of the impacts can be as important as, if not more important than, the overall impact. This section will first consider the impact of immigrants on unemployment, a topic of considerable interest to policy makers. It will argue that much of the conventional wisdom is based on myths. The discussion will then focus on the more important impact--the impact on the overall level and distribution of earnings and income.

Unemployment Myths and Realities

Much of the public debate regarding immigrants is expressed in terms of unemployment. In recent years there has been bi-partisan political support for the immigrant-unemployment connection as the Secretary of Labor in the Carter Administration and the Commissioner of the Immigration and Naturalization Service in the Ford Administration attributed the unemployment of at least 2 to 3 million Americans to illegal aliens.[1] The economic fear is that immigrants take jobs that natives would otherwise have, thereby creating unemployment.

It is important to distinguish between taking a particular job "slot" and depriving a native worker of a job. Clearly, if an immigrant takes a particular job washing dishes in the Sears Tower restaurant that job slot is not being filled by a native-born worker. This is the visible effect that generates resentment.

It is, however, the availability of jobs that attracts workers into the U.S. labor market, both from the home sector (outside the labor force) and from other countries. The absolute growth in employment has consistently exceeded the growth in the numbers unemployed. There is no fixed number of jobs in the economy and the extent of employment generally increases with increased immigration, although, as will be discussed below, relative wages may change.

Suppose a new immigrant takes a job that would otherwise have been occupied by a native worker. The immigrant may either hoard his earnings or spend it all, or do something in between. If the immigrant hoards the earnings, natives gain the benefit of his production, giving nothing in return but therefore a characteristic of recent labor force entrants. Recent immigrants in particular experience substantial upward occupational mobility, presumably often accompanied by periods of voluntary unemployment, as their skills adjust to the U.S. labor market. Other things the same, recent labor market entrants may also experience greater involuntary separations from employment as employers had less information about them when they were hired and as they have less seniority and training specific to the firm.

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[1] See "Illegal Aliens Cost U.S. Jobs--Marshall," Los Angeles Times, Sunday December 2, 1979, Part I, p. 1, and "'Silent Invasion' That Takes Millions of American Jobs," U.S. News and World Report, December 9, 1974, pp. 77-78. This view is not confined to the United States. "One and a half million unemployed is one and a half million immigrants too many" is also the slogan of anti-immigrant elements in France. "Immigrants in France are the Target of Resentment From the Left and Right" New York Times, September 30, 1980, p. 3

Data from the 1970 Census of Population and the Survey of Income and Education (1976) suggest that, other things the same, for adult white men the number of weeks worked in a year was lower among recent immigrants (mainly those in the U.S. less than 3 years) than among the native born and long term immigrants.[1] In the 1970 Census, in which year of immigration is reported in five year intervals, the foreign born in the U.S. less than 5 years worked 3 weeks less than the native born, immigrants in the U.S. 5 to 9 years worked one week less, and for those in the U.S. 10 or more years there was no difference from the native born. Among the foreign born, those in the U.S. for less than 5 years worked about 3 fewer weeks than others, with no significant differences among the six year-of-immigration cohorts in the U.S. for 5 or more years. Although the sample sizes in the 1976 Survey of Income and Education (SIE) are green pieces of paper that are inexpensive to produce. The effect is deflationary--it is as if the Federal Reserve System reduced the money supply by the amount hoarded.[1] Natives as a whole have greater income, native workers allocate themselves among jobs in the labor market, and the rate of increase in the price level is lower than otherwise. As long as there is some flexibility in wages and workers can change jobs, no permanent unemployment is created.

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[1] The analyses reported here using the 1970 Census of Population and the 1976 Survey of Income and Education were done for weeks worked in the prior year and unemployment in the reference week. Similar patterns emerged in the two data sets and in the weeks worked and unemployment analyses. The explanatory power is much greater in the weeks worked analyses as the dependent variable is based on 52 weekly observations, thereby reducing the influence of random variations. Similar patterns also emerged in analyses for Hispanic and non-white men. The empirical analyses reported in this paragraph and the next are based on Barry R. Chiswick, "Estimating the Impact of Immigrants on Earnings and Employment," University of Illinois at Chicago Circle, 1981 mimeo, Part A.

The more likely case is that the immigrant spends the earnings either in the U.S. or via emigrant remittances in the home country. There is no deflationary effect as the extra output produced by the immigrant is matched by the increase in the aggregate demand for goods and services. Employment is generated as workers produce the goods and services purchased by the immigrants.

In either instance, immigration per se does not result in a permanent net loss in jobs to natives even if immigrants take particular job slots that native workers would otherwise occupy. There are, however, three circumstances in which immigration could result in increased measured unemployment, although they are not what the proponents of the immigrant-unemployment connection appear to be referring. The first is the unemployment of immigrants *per se*. The second is frictional unemployment among the native population, while the third is structural unemployment arising from wage rigidities.

Recent entrants to the labor force, whether they are youths leaving school, women entering or re-entering the labor market after a period of child rearing, or new immigrants, engage in a job search process. It takes time to find a job and one way of learning about occupations and employers is to experience a variety of jobs. Higher than average voluntary job turnover is smaller than in the one-in-a-hundred sample from the Census, the greater detail on specific year of immigration for those in the U.S. five or fewer years is illuminating. The SIE data suggest that most of the smaller number of weeks worked among those in the U.S. 5 or fewer years is concentrated among the very recent arrivals, and that the difference in weeks worked narrows rapidly and virtually disappears by the end of 3 years.

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[1] The deflationary effect could, of course, be offset by appropriate adjustments in monetary policy.

As is true among the native-born, the number of weeks worked is greater the higher the level of schooling, and the greater the extent of labor market experience (both pre- and post-immigration) for the foreign-born. The number of weeks worked is also greater for those whose skills are more readily transferable to the U.S. labor market. Compared with immigrants from the British Isles, other things the same, immigrants from Cuba, Southern Europe and the Balkans worked one fewer week, those from Mexico worked two fewer weeks, while those from other Latin American countries worked 1.5 fewer weeks.

An influx of workers due to immigration will generate frictional unemployment among native-born workers. Frictional unemployment will arise whenever there is a change in the demand for or supply of labor that affects relative wage opportunities. Some workers will quit their current job in search of now higher paying new jobs. Employers in sectors where workers' marginal productivity has fallen below the wage will lay off some workers. Given the change in labor market opportunities both workers and employers invest more in information regarding the labor market, and one consequence is frictional unemployment. Note that given the immigration the frictional unemployment represents an efficient process through which workers identify and gravitate to what is now their best employment opportunity and through which employers adjust their work force to the new economic conditions.

Only a small proportion of native-born workers will experience frictional unemployment arising from immigration, and this unemployment will be short-lived--it will dampen as workers find their best employment opportunities in the new environment. The extent of frictional unemplyment will be less the greater the extent to which the immigrants are attracted to the U.S., and particular occupations or geographic areas, by expanding job opportunities. Frictional unemployment will be greater if immigrants are entering stagnant occupations or economically stagnant regions. Thus, for a given size of a cohort of immigrants, frictional unemployment among the native population will tend to be smaller if the immigration is predominantly economic in nature, rather than based on kinship or other criteria.

Wage rigidities, whether instituted by a legal minimum wage, a union wage or social convention can result in unemployment among the native born if immigration would depress the market wage below the wage floor.[1] If the wage floor exceeds the market wage more workers offer their labor services than there are job slots. One solution is, of course, to eliminate the wage floor. A "second best" solution to avoid this unemployment is to have an immigration policy that is not likely to result in pressures against the wage floor. The second-best solution is a policy favoring the immigration of high-skilled workers, thereby raising the productivity of low-skilled native workers and reducing the pressures against the Federal minimum wage. This would have particularly favorable impacts on the employment opportunities of native-born youths and disadvantaged minorities. It would, however, place downward pressure on the wages of high-skilled workers.

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[1] Some of the high unemployment or low weeks worked among immigrants during their first few years may be a consequence of such wage rigidities. On arrival immigrants tend to have low productivity, but with the passage of time, including job experience, they acquire skills relevant for higher paying jobs in the U.S. By reducing the option of working in very low wage jobs that provide substantial training the minimum wage may be impeding the upward economic mobility of immigrants.

As of January 1981 the basic Federal minimum wage was raised to $3.35 per hour. The minimum employment cost exceeds the minimum wage because of several payroll taxes (social security, unemployment compensation and worker's compensation) and mandated employer fringe benefits.

Impact on Income

For simplicity of exposition regarding the impact of immigrants on the level and distribution of income, let us assume that there are two types of workers, low-skilled and high-skilled, that within each type all workers are homogeneous and that the only other factor of production is physical capital. This is a world in which the three factors of production are substitutes for each other and the production function approximates one with constant elasticity of substitution. Even in such a simplified world, the answer to the question, "What is the impact of immigrants?" can be complex because of the potential for immigrant cohorts with quite different productivity characteristics. Although partially determined by external forces, such as a recession in one country or a revolution in another, under current circumstances and immigration quota ceilings over a period of years the characteristics of immigrant cohorts are largely determined by U.S. immigration policy. Again, for purposes of exposition, let us consider the implications of two polar cases--a cohort of low-skilled workers and a cohort of high-skilled workers.

The immigration of low-skilled workers reduces the marginal product of low-skilled native workers but raises the marginal product of high-skilled workers and capital. The former effect arises from the greater labor supply of low-skilled workers who are good substitutes in production for native low-skilled workers. The latter arises from the principle of complementarity, that the marginal product of a factor increases the greater the quantity of other factors of production with which it works. Although one native factor loses and the other native factors gain, the overall income of the native population increases.[1] That is, the losses to native low-skilled labor are more than offset by the gains to native high-skilled labor and capital. Thus, average income among the native population increases, but the distribution of this income becomes more unequal.

The increase in the aggregate and hence also the average income of the native population is in contrast to the decline in the average income of the total population (natives augmented by immigrants). This decline in the average income arises from the assumption that the low-skilled immigrants have lower incomes than the average of the native population. Thus, if the average income of the native population is a variable of primary interest for determining the appropriate immigration policy, changes in the average income of the total population (natives and immigrants) may be a misleading indicator.

The decline in the earnings of low-skilled native workers as a result of low-skilled immigration is partially mitigated by the income tax and the mix of income transfers. Many of the recipients of income-contingent transfers, particularly recipients of Aid to Families with Dependent Children (AFDC) and Supplemental Security Income (SSI), have little or no attachment to the labor market and hence do not suffer a direct adverse impact. Those who suffer a direct impact, the working poor, may be eligible for Food Stamps and Medicaid and, in single parent families, AFDC, and if they become unemployed, state unemployment compensation or AFDC-UP (unemployed parents component of AFDC). Because the aggregate income of the native population has increased, at least in principle sufficient income can be transferred from the gainers (high-skilled workers and owners of capital) to the losers (native low-skilled workers) so that all groups among the native population are at least as well off as before the immigration.

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[1] For a proof, see Barry R. Chiswick, "The Effect of Immigrants on the Level and Distribution of Economic Well-Being" in Barry R. Chiswick, editor, The Gateway: U.S. Immigration Issues and Policies, Washington: American Enterprise Institute, 1981.

A dilemma soon arises. By tradition as well as by law legal immigrants (resident aliens) are eligible for the same income transfer benefits as similarly situated natives.[1] However, if the low-skilled immigrants are to receive transfers that bring their incomes up to the pre-immigration income of native low-skilled workers, the aggregate transfers will exceed the increase in income of high-skilled workers and capital. Thus, the native population as a whole can be made worse off.

Let us next consider the immigration of a cohort of high-skilled workers. The wages of native high-skilled workers decline, while the wages of native low-skilled workers and the returns to capital increase. The aggregate income and hence the average income of the native population increases. The change in the average income of the total population is ambiguous unless it is determined whether the high-skilled immigrants have a higher or lower average income than the native population. The narrowing of skill differentials would appeal to those who favor smaller inequality in labor market outcomes.

The rise in the wages of native low-skilled workers increases their tax payments and lowers their receipt of income-contingent transfers. By using these resources, as well as the higher taxes paid by capital, and the positive taxes paid by high-skilled immigrants, the marginal tax rates on the earnings of native high-skilled workers can be lowered. Then, net of the tax-transfer system, high skilled workers can be made at least as well off as before the immigration, without eliminating all of the gains of native low-skilled workers and capital. Thus, with high-skilled immigrants equal treatment of immigrants and natives can be maintained in the income transfer system and all native groups can be made at least as well off as before the immigration.

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[1] A recent exception (1980 Amendments to the Social Security Act) limits the receipt of Supplemental Security Income benefits during the first three years in the U.S. unless an unanticipated disability arises after immigration. SSI provides cash benefits for low income aged and disabled persons.

Recent empirical research has examined the relation between the characteristics of immigrants in a native-born person's labor market and the earnings of the native born.[1] The analysis has been done for adult white non-Hispanic native-born men, using the 1970 Census of Population. Holding constant the native-born person's own human capital and demographic characteristics, weekly earnings among the native born are higher the greater the skill characteristics of the foreign born men in the labor market. Earnings are higher the greater the level of schooling and labor market experience of the foreign born. In addition, using immigrants from the English-speaking developed countries as the benchmark, earnings among the native born are unrelated to the proportion of immigrants from Mexico, but are higher the greater the proportion of immigrants from Europe, and the smaller the proportion from Cuba and other countries. Thus, more highly skilled or more productive immigrants are associated with greater earnings among the native born.

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[1] Chiswick, "Estimating the Impact," Part B.

One concern that is often expressed is that immigrants can take advantage of society's investment in public capital. Immigrants use roads, schools, dams, and parks constructed prior to their immigration and "dilute" the public capital available to the native population, thereby decreasing the income of the native population. That is, even high-skilled immigrants would be substantial beneficiaries of income transfers broadly defined to include the consumption of public capital.[1] This point, however, confuses the timing of the construction of public capital with the financing of this capital. The construction of most public capital is not financed out of current tax recipts, but rather out of bonds that are retired with revenues raised from user-fees (e.g., highways, bridges) or taxes (e.g., schools, parks) as the capital is consumed. To the extent that the public capital is paid for as it is consumed, immigrants do not gain and there is no dilution of the native's public capital even if it is constructed prior to the immigration.

Alternative Immigration Policies

The review of current U.S. policy showed that kinship is the primary criterion for rationing immigration visas and that the skills or productivity characteristics of visa applicants play a relatively minor role. The discussion of earnings indicated there is considerable systematic variation in the level of skills of immigrants. The analysis of their impact showed that more favorable impacts on the level and distribution of income of the native population arise from higher-skilled rather than lower-skilled immigrants.

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[1] This is one of the arguments in Dan Usher, "Public Property and the Effects of Migration upon Other Residents of the Migrant's Countries of Origin and Destination," Journal of Political Economy, October 1977, pp. 1001-1020.

This section reviews two very different approaches to the reform of immigration policy. The first is a skill-based rationing system in which an applicant's skill level, and hence likely economic success in the U.S., is the primary determinant of whether a visa is issued. A point system is proposed as the mechanism for administering the program. The second approach is the set of recommendations from the Select Commission on Immigration and Refugee Policy for modifications of the current system. The commission's recommendations would apparently reduce the already small role of productivity characteristics in issuing immigration visas, grant amnesty for illegal aliens, and increase the relative and absolute number of low-skilled workers in future cohorts of immigrants.

A Skill-Based Rationing System

As an alternative to the current system, the focus of immigration policy could be radically shifted from kinship criteria to productivity characteristics. Under a productivity or skill-based policy the primary criterion for rationing admissions would be the person's likely productivity in the United States.[1] Although additional research would be beneficial, research to date indicates that an immigrant's productivity, as measured by earnings and employment, appears to be related to the level and transferability of pre-immigration skills, including level of schooling, vocational and on-the-job training, occupation, and knowledge of English. Prearranged employment may also be a favorable characteristic.

One temptation in a productivity-based immigration policy is to grant visas to applicants in narrowly defined occupations in which there are "shortages," and deny visas to applicants in "crowded" occupations. Indeed, in the occupational preferences in current immigration law this approach has been adopted with absurd consequences. Physicians, nurses, physical therapists and dietitians, among others, are added or withdrawn from the most favored list (Schedule A occupations) not on the basis of labor market studies but on the basis of political pressures of interested parties. Studies are not done to determine whether other occupations, such as engineers, are in equally "short supply". The economic aspects of the issues, including the subsequent occupational adjustments of the immigrants and the change in the occupational structure of the native-born labor force as a consequence of immigration, appear to play no role in the rule-making process.

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[1] Productivity or skill characteristics and a point system form the basis for rationing visas by Canada, Australia and New Zealand.

How can we avoid the manipulation of a skill-based rationing system by narrow occupational interests? Visas granted on the basis of narrowly-defined occupations invite efforts to subvert the system. The more broadly defined the occupational categories, the more diffused the adverse impact from a cohort of immigrants and the smaller the incentive for any one occupation to attempt to close that category. Equally relevant, it is difficult for planners to know where there will be labor "shortages" and where there will be labor "surpluses" in the coming years. And even with this information, occupational adjustments occur not only through the immigration of persons in the occupation, but also through the substantial occupational change of immigrants after they arrive in the U.S. and the occupational change of natives as well. The focus in a skill-based rationing system should be on skill level rather than on the applicant's narrowly defined occupation.

To combine the multi-dimensional aspects of skills into rationing criteria may necessitate the adoption of a point system rather than a preference system. Under a preference system, as formulated in current law, a person must meet a minimum standard under any one of several categories to be eligible for a visa. There is no possibility for combining equities under each of two or more categories to raise one's rank in the queue. On the other hand, under a point system it is the sum of points obtainable from several categories, rather than crossing a threshold in any one category, that is relevant.

A certain number of points could be earned for various productivity traits and a visa would be issued to persons that satisfy a minimum number of points.[1] Each year of schooling completed may be worth, for example, two points. Apprenticeship training, vocational training and relevant on-the-job training would also earn points for the candidate. Points may be earned, say on a scale of 0 to 5, for fluency in English, and other points could be received for prearranged employment. To preserve the non-racist character of immigration policy points should not be granted on the basis of race, ethnicity, religion or country of origin.[2]

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[1] Persons exempt from the point system would be the immediate relatives (spouse and minor children) of U.S. citizens, refugees and their immediate relatives, and the immediate relatives of persons given an immigrant visa if they accompany the immigrant or come within, say, a year.

[2] Canada uses a point system similar to the one suggested here for persons who are not the immediate relatives of citizens. In addition to the criteria indicated in this section, Canada gives points for the intention to settle in a geographic area the Canadian government wishes to populate. This policy is of limited effectiveness as internal geographic mobility after immigration is not restricted. As specific residential location would also not be enforceable in the U.S. and as the U.S. does not have a clearly defined regional policy this would appear to be an inappropriate criterion for U.S. policy. Indeed, efforts by the U.S. government to disperse geographically the Indochinese refugees have been ineffective, as there has been substantial internal migration from the community of first settlement to California, their preferred state of residence. See Linda W. Gordon, "Settlement Patterns of Indochinese Refugees in the United States" INS Reporter, Spring 1980, p.6-10. For a description of the Canadian point system see New Directions: A Look at Canada's Immigration Act and Regulations, Ottawa, Canada, Employment and Immigration, April 1978.

The evaluating of skills and the awarding of points should be the responsibility of a single agency, the immigration service. To have this function performed in either the Department of Labor or the Department of Commerce is to invite efforts by interest groups entrenched in either agency to subvert the system for their own purposes. As an independent agency the Immigration Service would be subject to influences from many sources, and might be better able to steer a middle course.[1]

To reduce variations in the annual number of immigrants a worldwide annual quota could be retained, with visas issued to those with the largest number of points among those who satisfy the threshold. To reduce some of the uncertainty as to when immigration will occur among those in the queue, additional points (that do not count for the minimum threshold) can be given for waiting in the queue. Of course, if the queue gets too long either the minimum threshold number of points or the annual quota should be increased.

The point system can be flexible to provide greater immigration opportunities for persons with relatives in the U.S. This should be done without violating the rationing system's concern for the economic impact of immigrants. Thus, a small number of points may be awarded, for example, to applicants with relatives in the U.S. who will guarantee their financial support for, say, a five year period. In this manner persons who do not satisfy the general productivity criteria but whose presence is of "consumption value" to their relatives in this country would be more able to immigrate legally.

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[1] There is no compelling reason for immigration matters to be part of the Department of Justice. The immigration and naturalization function are separable and the latter may be an appropriate function for the Justice Department. As an independent agency the new Immigration Service would be less constrained by Justice Department interests in making its case for more resources for enforcement and would be in a better position to institute regulations and recommend policy changes based on overall economic considerations. The agency should not have cabinet status.

It may be argued by some that the productivity criteria outlined above is anti-family. That is, that such a dramatic change from the current system would end the humanitarian goal of family reunification. This is not the situation. The immediate relatives of U.S. citizens would still be eligible for admission without restrictions. Foreigners with more kinsmen in the U.S. would still be more likely to apply for an immigrant visas, as coming to the U.S. is more attrative to them than to others in their home country. Those who have sufficient points to immigrate can do so and be "reunited" with family members. Those with kinsmen in the U.S. would have two advantages. Their relatives could help them prearrange employment and they could guarantee the immigrant's financial support for the first five years. Willingness to engage in these activities is one test of the U.S. relative's interest in the immigration of kinsman.[1]

There will be many who could immigrate under the current kinship criteria but not under the productivity criteria. The immigration of these persons is at the expense of the U.S. population which accepts a less productive worker instead of a more productive worker without relatives already here. The largest adverse impact is experienced by native-born low-skilled workers who face greater competition in the labor market and in the allocation of income-contingent transfers from a larger number of low-skilled immigrants. The current system provides the largest benefits to the U.S. relatives of immigrants entering under kinship-criteria, many of whom are themselves recent citizens and resident aliens.[1] This inequity would be removed under the productivity criteria.

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[1] Voluntary family dislocations that arise from economic migration are a less compelling reason for special "family reunification" visas than are the involuntary separations and dislocations often arising from situations that create refugees.

There would be more broadly-based political support for admitting a larger number of immigrants each year under a skill-based rationing system than under the current kinship system. This would arise from the more favorable impact of immigration on both the level and distribution of income. The extent to which the optimal number of immigrants would increase as a consequence of the change in criteria is an empirical question that warrants further study.

The SCIRP Recommendations

The Select Commission on Immigration and Refugee Policy, created by an Act of Congress in 1978, released its recommendations in February 1981.[2] The Commission's recommendations focused on a modification of the preference system for legal immigrants, amnesty for illegal aliens in the U.S. and policies to control future illegal immigration. The apparent thrust of the commission's recommendations is to increase the role of kinship and decrease the already small role of skill or productivity in rationing immigration visas, to increase immigration of low-productivity workers, and to shift much of the burden of the enforcement of immigration law to employers through a requirement that they screen all workers for their legal status.

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[1] The supporters of kinship preferences do not disagree with this interpretation. In an address before the American Committee on Italian Migration, Sen. Dennis De Concini, a SCIRP commissioner said: "Proposals have been offered to eliminate the 5th preference. It is felt by some to be too generous, as it refers to a horizontal rather than a vertical family concept... But to deny that brothers and sisters are an integral part of the family is to impose upon many ethnic groups a narrow concept of family and one that especially discriminates against the Italian-Americans. We also should stress the rights of U.S. citizens by allowing them to bring their families to America. This view should precede the technical notion that we need certain types of specialists and skilled workers." Reported in American Committee on Italian Migration, Immigration Update 1980--National Symposium, New York, 1980.

[2] Select Commission on Immigration and Refugee Policy, U.S. Immigration Policy and the National Interest, March 1, 1981.

SCIRP recommended retaining the current policy of allowing immigration without numerical limit for the spouses, minor unmarried children, and parents of adult citizens. It recommended adding adult unmarried children (currently the first preference) and grandparents of adult citizens to the exempt list. Under current regulations there is little binding constraint on fisrt preference visa applicants from most countries, with Mexico being the main exception.[1]

The Commission endorsed a world-wide numerical limit and country quotas for other relatives and "independent immigrants". The recommended world-wide limit is 350,000 visas per year, with an additional 100,000 visas per year for five years to reduce the number of "active immigrant visa applications," that is, the visa backlog.[2] The categories for other relatives would consist of the current 2nd, 4th and 5th preferences (see Table 1), as well as a new

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[1] As of January 1, 1980, Mexican nationals were 38 percent of the first preference visa backlog (SCIRP, Table 9,p.146).

[2] As of January 1, 1980 there was a backlog of 1.1 million visa applications, an increase of 100,000 over the previous year (SCIRP, Table 9, p. 146). The Commissioners called for reducing the visa backlog as quickly as possible. Although no formal vote was taken, the report notes that "many commissioners are of the view that per-country and preference ceilings--although applied to new applicants under the proposed system--should not apply to those in the backlogs" (SCIRP, p. 150). Much of the backlog is concentrated in a small number of high-demand countries--Mexico, 25 percent; Philippines, 23 percent; Korea, 7 percent. The backlog exists primarily in the kinship preferences and non-preference categories (5 percent in the 2nd preference, 50 percent in the 5th preference, 26 percent in the non-preference category), with only 7 percent in the occupational preferences (primarily Philippines, China, India, Korea) (SCIRP Table 9, p. 146).

category, the unmarried adult children of resident aliens. It further recommended that a "substantial" number of visas be set aside for the spouses and unmarried (minor or adult) children of resident aliens, that there be no country ceilings for the spouses and minor children of resident aliens and that these visas should be issued on a first-come first-served basis.
The second preference country ceiling is severely binding only for Mexico. As of November 1980, second preference applications by Mexican nationals filed in October 1974 were at the top of the queue.[1] The recommendations regarding the current second preference are related to the commission's proposal of amnesty.

The independent immigrant category, which would replace current occupational and non-preference categories, is viewed by SCIRP as a means of creating new kinship immigration streams ("new seed" immigrants), rather than as a mechanism for selecting workers with the greatest productivity in the U.S.: "It is the Commission's hope that this category will provide immigration opportunities for those persons who come from countries where immigration to the United States has not been recent or from countries that have no immigration base here" (SCIRP, p. 16). The independent category includes a numerically limited number of persons with "exceptional merit and ability in their professions." But SCIRP writes: "The Commission's intent is not to provide a separate category for highly trained or needed professionals (for example, nurses, doctors, engineers), artists or other persons of merit unless they are exceptional and qualify under specific established guidelines...(T)he Commission further cautions against the creation of a significant channel which could deprive other nations of the highly skilled persons they need" (SCIRP p. 130).[1] A presumably somewhat larger category of other independent migrants is also proposed to "allow the entry of persons without family ties in the United States and of persons whose family ties are distant... One possible benefit will be the increased proportion of immigrants screened for labor market impact which will both protect U.S. workers and enhance economic growth" (SCIRP p. 135 italics added).

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[1] The second preference visas were current (i.e., no backlog) overall and for all other independent countries, with the exception of China (April 1980) and the Philippines (October 1978). Immigrant Numbers for December 1980, Visa Service, U.S. Department of State, Vol. 5, Number 3.

SCIRP recommended amnesty for illegal aliens in the U.S. as of January 1, 1981. Once given an adjustment of status these persons could serve as sponsors for their relatives. Amnesty would increase the number of low-skilled workers in the U.S. in three ways. First, the prospect of amnesty would encourage the illegal migration of other low-skilled workers with the expectation that, once granted, amnesty would be offered repeatedly; indeed, illegal immigration increased sharply when President Carter made his proposal for amnesty in 1977. Second, amnesty would substantially increase the demand for immigration visas by the spouses and minor children of those given amnesty, and many of these would soon enter the labor market. Recommendations referred to above regarding more favorable immigration treatment of this category, especially for Mexican nationals, would allow the system to satisfy much of this increased demand for visas. Third, many illegal aliens who return home during periods of seasonal and cyclical slack in employment would remain in the U.S. as their families would be with them and they could legally receive income transfers.

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[1] The Commission's view regarding the immigration of professionals is exemplified by its statement on nurses: "The Commission concludes that the continuing shortage of practicing nurses in the United States justifies the admission of foreign nurses while the shortage continues, but urges that efforts be intensified to make nursing a more attractive career to induce more inactive U.S. nurses to return to that profession" (SCIRP, p. 223).

SCIRP proposes to control future illegal immigration through increased resources for border-enforcement and employer sanctions. The commission favors border enforcement over interior enforcement by the immigration authorities; "It is both more humane and cost-effective to deter people from entering the United States than it is to locate and remove them from the interior" (SCIRP p. 47). As noted above, however, border enforcement may be more cost-effective per apprehension, but it is not necessarily more cost-effective per deterred alien. A recommendation is made for a "substantial increase" in funding and personnel for the border patrol, but no parallel recommendation exists for interior enforcement. There are no recommendations for penalties other than deportation against apprehended illegal aliens, even for those who engage in flagrant and frequent violations of the law. SCIRP also endorsed the ruling by the Attorney General that "state and local law enforcement officers should be prohibited from apprehending persons on immigration charges, except in alien smuggling cases" (SCIRP pp. 256-257). This ruling limits the scope for effective interior enforcement.

The Commission endorsed civil penalities against employers who knowingly employ illegal aliens and criminal penalties against those who engage in "flagrant and extended violations of the law following the imposition of civil penalties" (SCIRP, p. 63-64). The Commission was vague as to the mechanism through which employers could verify a worker's legal status; they "support a means of verifying employee eligibility that will allow employers to confidently and easily hire those persons who may legally accept employment"

(SCIRP, p.67). The report does not indicate the magnitude of these employee verification costs, their effects on the employment opportunities of high-turnover, low-skilled American workers, or whether such verification is feasible without a national identity card. Employer sanctions are not likely to reduce employment opportunities for illegal aliens without both a national identity card and vigorous internal enforcement.

Although there is much public concern with the use of welfare and subsidized medical care by illegal aliens, the Commission did not offer any recommendations on this issue. It did not, for example, endorse or even vote on proposals that have been made to alter current Department of Health and Human Services regulations that bar welfare and other public aid agencies from reporting suspected illegal aliens to the immigration authorities. Indeed, it is curious that SCIRP endorsed extending the burden of enforcement to employers while favoring the current restrictions on referrals by state and local law enforcement authorities and welfare agencies.

The overall thurst of SCIRP's policy recommendations is to increase both the number and proportion of low-skilled immigrants while decreasing the number of high-skilled immigrants. This presumably arises from the Commission's concern for "global inequities" (SCIRP, p. 20) and what appears to be a desire to substantially increase immigration from Mexico. In nearly each instance recommended modifications of current policy would favor Mexican immigrants over immigrants from other countries. These policies would deprive the U.S. of many highly productive foreign workers, depress the earnings of low-skilled American workers, and result in increased taxes to pay for an expanded income transfer system. The economic impacts of its recommendations on the United States appear to have been of lesser concern to the Commission.[1]

Conclusion

Immigration will continue to play an important role in American economic life. The public policy issue is not simply whether immigration per se is beneficial, but rather whether increased benefits to the U.S. can be obtained from changes in the number of immigrants and the rationing criteria.

In an era when public policy showed little regard for the income distribution impacts of immigration and when there were no public income transfer systems to mitigate the losses to groups for whom the impact was adverse, an open-door or laissez-faire immigration policy was politically acceptable. These conditions no longer prevail, and an open-door immigration policy is not a politically viable alternative.

If there are to be limits on immigration there must be a rationing mechanism. A rationing mechanism that would provide a more rapid growth in the income of the native population and a relatively smaller income transfer system is generally to be preferred to one that offers opposite effects.

Current immigration policy is characterized by a rationing system that is based on kinship and by lax enforcement of immigration law. This policy has resulted in a relatively larger number of low-skilled immigrants than if the rationing criteria focused on the level of skill. The Select Commission on Immigration and Refugee Policy would apparently further increase the role of kinship and decrease the already small role for the productivity characteristics or skills of the visa applicants. Rather than endorsing a major strengthening of the enforcement of current immigration law the Select

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[1] This was perhaps foreshadowed by the Commissions research agenda which virtually ignored research on illegal aliens and the labor market impacts of immigrants. See SCIRP, Appendix G, pp.432-437.

Commission proposes legalizing the status of illegal aliens in the U.S. and shifting much of the enforcement responsibilities to employers through sanctions on those who employ illegal aliens. The commissioners equivocated, however, on the crucial issue of how employer sanctions were to be administered.

As an alternative, a two pronged policy approach could be adopted. One prong is the more stringent enforcement of current immigration law, not only at the border but also in the interior. The second prong is shifting the focus in rationing visas from kinship to the applicant's level of skill. As skill is not unidemensional a point system should be adopted to combine the diverse elements into a single number. Visas would be issued to those with the greatest number of points, that is, to those with the greatest likely productivity in the U.S. Points could also be given for kinship criteria, but this should not be allowed to overwhelm the productivity criteria. These proposals better satisfy the twin objectives of increasing the productive potential of the economy and reducing the relative size of the income transfer system than either the current system or the Select Commission's recommendations.

The National Association of State Departments of Agriculture

1616 H Street, N.W. • Washington, D.C. 20006 • (202) 628-1566
James B. Grant, *Executive Secretary*
Stuart B. Hardy, *Assistant Executive Secretary*
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MAY 7 1981

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May 5, 1981

Hon. Alan K. Simpson, Chairman
Judiciary Subcommittee on Immigration
  and Refugee Policy
U.S. Senate
Washington, DC 20510

Dear Chairman Simpson:

The National Association of State Departments of Agriculture (NASDA) adopted a policy resolution concerning temporary farm workers at our most recent annual meeting last Fall in Las Cruces, New Mexico. I hereby submit this resolution (Policy # MAD-5) for your consideration during the immigration hearings being conducted jointly by your Subcommittee and the House Subcommittee on Immigration, Refugees and International Law.

NASDA represents the food and agriculture departments of the fifty states and four U.S. territories. We are alarmed by the lack of a dependable supply of seasonal and temporary farm labor in several regions of the country in recent years. Despite mechanization, many sectors of the agricultural economy continue to rely heavily on foreign workers who are more than willing to undertake work that otherwise would not be done.

We are very pleased that you and Chairman Mazzoli have called hearings on this important issue, and we look forward to assisting the subcommittees in any way we can as you proceed with legislation. I

May 5, 1981
Hon. Alan K. Simpson
Page 2

respectfully request that the enclosed policy resolution be made a part of the permanent hearing record.

Yours very truly,

James B. Grant

James B. Grant
Executive Secretary

JBG:lba

Enc.

NATIONAL ASSOCIATION OF STATE DEPARTMENTS OF AGRICULTURE
1616 H Street, N.W., Washington, DC 20006

1980

Policy No. MAD-5

TEMPORARY FARM WORKER PROGRAM

The agricultural industry of the United States requires large numbers of workers, particularly during the harvest season. Temporary farm workers are needed in every state that has a significant agricultural industry and the supply of labor must be dependable and qualified. Domestic labor sources have not and will not provide sufficiently dependable and qualified workers to meet the need of the agricultural industry. Large numbers of temporary and seasonal agricultural workers are undocumented aliens and the granting of permanent immigration status to undocumented aliens presently in the United States will not provide seasonal and temporary workers. The temporary worker program commonly referred to as the H-2 program (Section 101(a)(15)(ii) Immigration and Nationality Act) is presently used to supplement all other labor sources, particularly for the northeast and southeastern producers and by the sheep industry.

RESOLVED, that the National Association of State Departments of Agriculture, meeting in Las Cruces, New Mexico, November 19, 1980, requests and urges the President of the United States, the U.S. Congress, the U.S. Departments of Labor and Agriculture, the Commission of Immigration, and the Select Committee on Immigration and Refugees to include as part of any immigration reform program a reasonable, workable, and expedient temporary worker program that will provide temporary and seasonal farm workers required by the agricultural industry in the United States.

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Executive Director:
John J. Gunther

May 13, 1981

Romano L. Mazzoli, Chairman
Subcommittee on Immigration, Refugee
  and International Law
2137 Rayburn HOB
Washington, D.C. 20515

Dear Chairman Mazzoli:

At the hearing which you and Senator Simpson conducted last week on the Report of the Select Commission on Immigration and Refugee Policy you requested that the U.S. Conference of Mayors provide you with information on how an impact aid program for communities with high concentration of refugees might be structured. This is an issue of particular concern to many local governments and we are very pleased to have the opportunity to submit this letter for the record.

The comments below reflect staff analysis of city needs from an impact aid program. Following the June meeting of the U.S. Conference of Mayors and a planned working meeting on impact aid late this summer, we hope to make available specific Conference policy on the subject.

- We can appreciate the fiscal constraints under which refugee programs are operating. However, given anticipated reductions in current refugee programs, we cannot sanction further reductions to allow for impact aid. (This would be robbing Peter to pay Paul.) Impact aid becomes meaningful only if it brings additional assistance.

- Determination of community impact should take into account the following: The percentage which refugees constitute of the city's population, unemployment and housing vacancy rates, utilization by refugees of education, health, social services and job training programs, and the percent of the local population below the poverty level.

- Measures of refugee impact should rely on standardized data collected by local governments. In the past, local governments have expressed a preference for locally generated data. This information is seen as more accurate and reliable. Data bases such as noted previously should be available in all cities and counties.
- Impact aid should be provided for a period of three years. After that time, need for the program should be reevaluated. To ensure continuing equitability of distribution of funds, communities should reapply each year. This would account for economic and demographic shifts, in particular, secondary migration. Paperwork must be kept at a minimum.
- Per capita grants are the most reasonable form for impact aid. A system similar to revenue sharing would be acceptable.
- Impact aid should go directly to cities and counties. These are the governmental units most directly responsible for administration of programs and services for refugees.
- No more than 25 communities should receive impact aid. Limiting the number of grants assures availability of meaningful amounts of funds to impact aid recipients.

We would be happy to work with you and the staff of the Sub-Committee to discuss these elements further and to work out additional details.

Sincerely,

John Gunther

John J. Gunther
Executive Director

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May 22, 1981

Senator Alan K. Simpson, Chairman
Senate Subcommittee on Immigration
  and Refugee Policy
Dirkson Building
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Washington, D.C. 20510

Representative Romano L. Mazzoli, Chairman
Subcommittee on Immigration
  and International Law
Longworth House Office Building
Room 2246
Washington, D.C. 20515

Comments for the Record on the Final Report of the
Select Commission on Immigration and Refugee Policy

Dear Sirs:

The comments set forth below represent the views of the Farm Labor Executive Committee, Washington, D.C. representing approximately 350 East Coast apple growers and the Virginia Carolina Agricultural Producers Association of South Hill, Virginia representing approximately 125 small tobacco growers. The membership of both organizations have in common the fact that they rely in part on temporary, foreign H-2 harvest workers to assist them in bringing in their crops. In the case of the East Coast apple growers, their experience with H-2 workers spans three decades while the tobacco growers have been involved in the program for approximately three years.

Both organizations have presented detailed statements to the Select Commission on Immigration and Refugee Policy and have participated in the Commission's public hearings. Because their views and supporting data already form a part of the Commission's hearing record, this statement will necessarily be a summarization of their views on the subject of H-2's. We would be happy to elaborate on any of the points raised herein by providing supporting data as may be requested by your staff. An attempt is made here to address questions raised by your committee members at public hearings on May 5, 1981.

The H-2 program should be markedly expanded and streamlined. Congress will not be able to solve the illegal alien problem in agriculture unless the H-2 program is markedly expanded and streamlined. Many farmers across the United States use illegal aliens because there are insufficient U.S. citizens willing to do farm work at the time and place needed. The only alternative, the present H-2 program, is so cumbersome, expensive, and time-consuming that it is easier to hire illegals. If the Congress enacts employer sanctions without greatly expanding and simplifying the H-2 program, farmers will either stop farming or continue using illegals, notwithstanding the increased risk.

Amnesty for resident illegals will provide little help to farmers. Proposals to grant amnesty to illegals currently residing in the United States won't appreciably help small farmers. Experience has shown that both illegal aliens and temporary legal aliens who become lawful permanent residents quickly move out of entry level jobs when their status is adjusted. Legalizing those undocumented workers currently will surely result in a major movement of workers out of agriculture. Without an H-2 program, a serious problem will become a critical one.

Similarly, a guestworker program will not help farmers in areas where guestworkers choose not to go. Our growers have had experience with farm workers from Puerto Rico and elsewhere who are provided free transportation to any of our growing areas, yet decline to go to such places as Northern New England to work. Unless a farmer has a mechanism, such as the H-2 program, to bring workers directly to his farm, the number of guestworkers in the United States is irrelevant to him. A farmer still needs to get his crop picked. While our growers do not oppose a guestworker program, they are convinced that it will not solve their harvest labor problems.

An H-2 program is much preferred to a guestworker program. An H-2 program assures a particular farmer that his supplementary harvest labor needs would be filled, if sufficient U.S. workers are not ready, willing, and able to accept employment. The guestworker program does not provide such an assurance. Moreover, the H-2 program is preferable because both the government and the farmer keep track of the foreign workers and, at the end of the employment period, assure their return to their native lands. A guestworker program provides no such tracking capability and thus amounts to little more than legalizing the undocumented workforce without providing additional protection. Since both the

Federal government and the employers where the workers will be working, how long and under what terms and conditions they will be employed, the workers' rights are protected. Finally, since the employer is responsible for the return of the workers to their homelands, the H-2 program has been immensely successful as a vehicle for controlling illegal immigration into the United States.

The H-2 program must be simplified. In addition to the improving the timeliness of decisions regarding the admission of H-2's into the United States, there are many steps that could be taken to simplify the program. We have attached copies of the complicated, expensive, and cumbersome Labor Department regulations governing the H-2 certification program, 20 CFR Parts 653 and 655. As you can see, involvement in this program implicates a small farmer in a very complex set of regulations which most find ridiculously confusing and expensive. It is almost impossible for a grower to participate in the H-2 program without hiring a lawyer or being a member of an organization that has legal expertise. The whole program can be simplified by eliminating most or all of the provisions of the regulations, in particular, the onerous adverse affect wage rate provision which artificially sets a high wage rate for the H-2 users! Participants in the H-2 program ought to be held to the same standards, Fair Labor Standards Act, OSHA, etc. to which all other farmers in the United States are held.

Ending the H-2 program is contrary to the objectives of the Commission. There is a great need for temporary foreign farm workers in the United States on a seasonal basis and any attempt to end the H-2 program will foredoom the Congress's efforts to stem the flow of illegals. Congress ought to expand the program, not contract it.

Our growers would strenuously oppose employer sanctions unless accompanied by a greatly expanded and simplified H-2 program. To impose employer sanctions while at the same time constricting the H-2 program would spell disaster for small farmers. While the grower members of F.L.E.C. and V.C.A.P.A. seek to avoid to knowingly employing illegal aliens, they would oppose any employer sanctions unless the H-2 program is changed dramatically. To do otherwise would commit them to their own economic distruction. There are hundreds of thousands of illegal aliens employed on U.S. farms, not because farmers prefer hiring illegal aliens, but because the domestic work force available for harvest work is shrinking rapidly. To penalize employers for hiring illegal aliens without providing an alternative source of legal foreign workers, would have a devastating effect. Our growers simply could not support such an action by Congress.

S Steven Karalekas

S. Steven Karalekas, Legal Counsel
Farm Labor Executive Committee and
Virginia Carolina Agricultural
Producer's Association